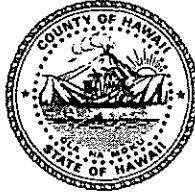


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

P 101 317 858

July 15, 1999

Mr. Dayne Tamanaha
131 Anela Street
Hilo, HI 96720

Dear Mr. Tamanaha:

VARIANCE PERMIT NO. 1030 (VAR 99-045)

Applicant: DAYNE TAMANAHA

Owner: DAYNE TAMANAHA

**Request: Variance From the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,
Ratified April 6, 1999**

Tax Map Key: 1-5-035:042, Lot 278

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1030 allows portions of an existing dwelling and water tank to remain within the affected side yard and open space "AS BUILT" in lieu of the minimum 20 feet and minimum open space of 14 feet as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum side yard and open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 1.000 acre is Lot 278, Block 2, of the Hawaiian Paradise Park Subdivision, situated in the Puna district, Hawaii. The property's address is 15-1525 27th. Avenue. The property is zoned Agricultural (A-1a) by the County.
2. It appears that the existing building improvements were constructed under a building permit (B P No. 920985) issued by the Department of Public Works (DPW), Building Division in Hilo. B P No. 920985 was opened by the DPW on May 18, 1992.
3. It appears the site plans attached to the detailed building construction plans for the dwelling, garage, and water tank were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements on the property. B P No. 920985 was closed by the DPW on March 1, 1993. Furthermore, the building permit to construct "ohana dwelling" was cancelled by the applicant and closed by the DPW on May 17, 1999.
4. The site plan drawing, drawn to scale and dated May 5, 1999, by the Independent Hawaii Surveyors, identifies the existing dwelling and water tank and building setback lines on the subject property. The site plan identifies the location of the building encroachments and identifies the dwelling and water tank encroachments, 1.18 feet and 14.83 feet, respectively, within one of the property's two side yards. Furthermore, the site plan denotes the distances between the respective building encroachments and the affected side boundary line. By a previous verbal agreement between the applicant and current owner(s) of the adjacent property (Lot 277), the overflow drain for the water tank located on Lot 278 supplies surplus water into an existing water tank on Lot 277. Based on a July 12, 1999 telephone conversation, the applicant will eliminate appurtenances from the water catchment tank located on Lot 278 that protrudes into Lot 277.

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5. The applicant's "Variance Application (ATTACHMENT)", states in part:
 - "2) The existing dwelling, water tank, and other related site improvements were constructed under a building permit (B No. 920985) issued by Department of Public Works(DPW)-Building Division in 1992 (sic). Said building permit was opened on May 18, 1992.
 - 3) I believe the existing water tank was purchased from and installed by a company called "U.S. Construction" (?). It appears the company or business responsible for the tank installation is no longer in business and is not currently listed in the phone book.
 - 4) It appears a small portion of the existing dwelling and portion of the existing water tank was inadvertently constructed within one of the property's two side yards. Building inspections of the premises, during building construction throughout the life of the building permit did not disclose any building setback irregularities. The building permit (B No. 920985) was closed by the DPW-Building Division on March 1, 1993.
 - 5) I was not aware of any encroachment problems until a modern survey was required by the realtor and escrow company. A copy of map (sic) prepared and drawn by a licensed land surveyor identifying the location of all existing building improvements dated May 5, 1999 is included with my variance request and for the record."
6. The Department of Finance-Real Property Tax memorandum dated May 26, 1999, in the subject variance file states in part:

"Our records indicate that Ohana Dwelling permit #94-33 was issued to this property on 2/18/94.

Real Property taxes are paid through June 30, 1999."
7. The State Department of Health (DOH) memorandum dated June 1, 1999, in the subject variance file states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs (sic) to be maintained."

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8. The Department of Public Works (DPW) memorandum dated May 28, 1999, states in part:

"We have reviewed the subject application and have no comments to offer."

9. Proof of mailing was submitted on June 2, 1999. No objections to the variance application were received from the surrounding property owners. A letter from Paradise Hui Hanalike endorsing the variance request was received on June 14, 1999.

The present owners/applicants submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the dwelling and the affected side boundary lines. Portions of the existing dwelling and water tank were constructed within one of the property's two side yards.

Therefore, considering the foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner/applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owners/applicants. Alternatives available to the applicant include the following: Removing the existing building encroachments or relocate the water tank within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing dwelling would be economically unreasonable and may disrupt other existing site improvements.

The applicant, on his own volition, is honestly trying to resolve a building encroachment problem. No evidence has been found to show indifference or premeditation by the applicant to deliberately or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners or applicants when a more reasonable alternative is available by the granting of the subject variance request.

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INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The existing building improvements were constructed by the applicant under one (1) building permit. Building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any building setback irregularities. The current owner or applicant was not aware of all encroachment problems until the modern survey was performed.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within one of the two side yards. The existing building encroachments are not physically and visually obtrusive from the existing adjacent property or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears, the existing dwelling's and water tank "footprint" and building encroachments built and established recently within the property's side yard have not visually, physically or adversely affected the rights of the adjacent or surrounding property owners. Therefore, it is felt the existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the property and within the affected side yard were the result of mapping and building discrepancies or misinterpretation of the minimum yards during building construction. Inspection of the property during the life of the building permit by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

The subject variance application was acknowledged by certified letter dated May 20, 1999.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is July 13, 1999.

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2. The approval of this variance is only from the Zoning Code. The applicant/owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. The location of the existing dwelling and portion of the water tank on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing building improvements identified on the plot or site plan dated May 5, 1999, to remain on the subject property with the exception that the overflow drain from the water tank will be eliminated.
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



for VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp

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c: Real Property Tax Office