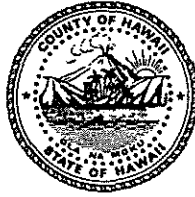


Stephen K. Yamashiro  
Mayor



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 101 317 875

August 3, 1999

Mr. Ronald A. Rigg, PB  
RSM, INC.  
68 Kekuanaoa Street  
Hilo, HI 96720

Dear Mr. Rigg:

VARIANCE PERMIT NO. 1041 (VAR 99-054)  
Applicant: RONALD RIGG  
Owner: PAUL STURM  
Request: Variance From the Minimum Yards  
Pursuant to Chapter 25, Zoning, Ratified April 6, 1999  
Tax Map Key: 9-9-009:094, Lot 224

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. 1041 allows portions of an existing dwelling to remain within the affected side yard "AS BUILT" in lieu of the minimum side yard of 10 feet as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (B).

#### 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:

006837

AUG 04 1999

Mr. Ronald A. Rigg, PB  
RSM, INC.  
Page 2  
August 3, 1999

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 11,196 square feet is Lot 224, Volcano Golf Club and Country Club Subdivision, located at Keauhou, Kau, Hawaii. The property's address is 99-1965 Pukeawe Circle. The property is zoned Single-Family Residential (RS-15) by the County.
2. The existing building improvements were constructed under two (2) building permits (B No. 861989 and B No. 921729) issued by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the site plans attached to the detailed building construction plans for the original dwelling and addition 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. B No. 861989 to construct the dwelling was closed on June 22, 1987 and B No. 921729 for a storage addition was closed on December 23, 1992 by the DPW.
4. The site plan drawing, drawn to scale and dated April 16, 1999, by the Independent Hawaii Surveyors, identifies the existing dwelling encroachment into a side yard. The dwelling encroachments intrude 1.04 feet into the affected side yard. Furthermore, the distances between the building encroachments and roof eave to the affected side boundary line are identified and denoted.
5. The applicant's attachment, dated May 17, 1999, states in part:

"This letter is in regard to an "Application For Variance" on 99-1965 Pukeawe Circle.

The home is located at Volcano Golf & C.C., TMK# 3rd-9-9-9-94. Upon receipt of a recent survey, it was discovered that the corner of an attached storage locker projects 1.06 feet into the side county zoning code building 10 feet set back of the northeast boundary. The eve of this locker projects another 24 inches beyond the corner. The door is attached to that corner. Given that and the narrow depth of this storage locker it would make it awkward to chop off the corner and still be functional. A permit was obtained and finalized by the county for this addition. The inspector did not question the set back. A string line was pulled from the front to the rear stake. The effort was made to observe

Mr. Ronald A. Rigg, PB  
RSM, INC.  
Page 3  
August 3, 1999

the 10 foot set back however the string line varied some what with the vegetation and elevation change. It is obvious now that it was shaved to close. In an effort to clear this up we are giving notice. If we didn't no one would have ever notice. The corner that projects over into the set back is approximately 1/2 square foot. The fact that it is storage and not living area would be more reason that this should be acceptable. Please note that this does "not" go over the boundary line, (sic) It is approximately 9 feet from the boundary. We are requesting a variance from the county to allow this to stand based on its low impact to the adjacent owners and its present use as storage."

6. The Department of Finance-Real Property Tax memorandum dated June 28, 1999, in the variance file states in part:

"There are no rollback tax consequences."

"Current Real Property taxes are paid through June 30, 1999."

7. The State Department of Health (DOH) memorandum dated June 23, 1999, in the subject variance file states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

8. The Department of Public Works (DPW) memorandum dated July 23, 1999, states in part:

"We have reviewed the subject application and our comments are as follows

1. All new building construction shall conform to current code requirements
2. The minimum setbacks shall be maintained as follows: residential structures- 3 ft. side, 3 ft. rear; commercial 5 ft. side, 5 ft. rear."

9. The applicant submitted proof of service to serve first and second notice of the application on the designated and surrounding property owners. The first notice was mailed by the USPO on June 8, 1999, and the second notice was mailed by the USPO on July 3, 1999. An inquiry letter dated July 7, 1999 was received from Rodman B. Miller, M.D. on July 20, 1999. No other letters or objections

Mr. Ronald A. Rigg, PB  
RSM, INC.  
Page 4  
August 3, 1999

to the variance application were received from any other of the surrounding property owners.

The applicant and owner submitted a site plan which identifies the location of an existing dwelling improvements and covered water tank. The site plan submitted identifies the distances between the dwelling encroachments and the affected side boundary line. Portions of the existing dwelling was 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 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 applicant/owner. Alternatives available to the applicant include the following: Removing the existing building encroachments 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 and owner are honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the applicant or owner 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.

#### 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 owner(s) under two (2) building permits. 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

Mr. Ronald A. Rigg, PB  
RSM, INC.  
Page 5  
August 3, 1999

owner or applicant were not aware of any 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 "footprint" and building encroachments within the affected 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 caused by a unintentional 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 June 16, 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:

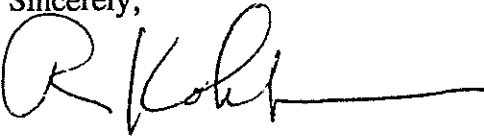
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is July 29, 1999.
2. The approval of this variance is only from the Zoning Code. The applicant/owner, successors or assigns shall indemnify 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.

Mr. Ronald A. Rigg, PB  
RSM, INC.  
Page 6  
August 3, 1999

3. The location of the existing dwelling 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 April 16, 1999, to remain on the subject property.
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  
F:\WP60\WRY\FORMLETT\VARAP111.PS1

c: Real Property Tax Office  
Rodman Miller, M.D.