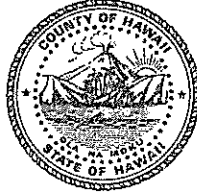


Stephen K. Yamashiro
Mayor



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 101 317 947

September 9, 1999

Mr. Robert DeCoito
203 Kulana Street
Hilo, HI 96720

Dear Mr. DeCoito:

VARIANCE PERMIT NO. 1048 (VAR 99-061)

Applicant: ROBERT DECOITO

Owner: GLORIA JEAN OH YOUNG

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: 1-5-040:193, Lot 34

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. 1048 allows portions of an existing 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 34, Block 6, Land Court Application 1053, Hawaiian Paradise Park Subdivision, situated in the Puna district, Hawaii. The property's address is 15-1810 and 15-1810-A 24th. Avenue. The property is zoned Agricultural (A-1a) by the County.
2. The original owners, Mr. and Mrs. Robert DeCoito, were issued Building Permit Number (B NO.) 861926 by the Department of Public Works (DPW) to construct the first dwelling and water tank on subject TMK property within an area located approximately 150 feet from of the front property line. B NO. 861926 was opened to construct the first dwelling on the property on November 19, 1986 by the DPW and closed on December 21, 1987 by the DPW.

Mr. and Mrs. DeCoito were granted an Ohana Dwelling Permit (OD 94-52) on March 11, 1994 to construct an ohana dwelling (second dwelling) on the subject TMK property within an area located approximately 85 feet from the rear property line. Mr. and Mrs. DeCoito were granted a second building permit (B NO. 940548) to construct the ohana dwelling or additional single family dwelling unit and water tank on the subject TMK property. B NO. 940548 was opened on April 21, 1994 and closed on August 7, 1995.

The Zoning Code defines both water tanks as accessory buildings. The existing water tanks were built and established on the subject TMK property prior to December 7, 1996. Prior to December 7, 1996, the Zoning Code permitted and required accessory buildings to observe only the minimum front and side yard requirements, unless the rear line abutted an alley or right-of-way. Therefore, the second water tank constructed in conjunction with the ohana dwelling within the 30 feet rear yard is not in violation of the minimum yard requirements. It appears the first water tank constructed under the first building permit encroaches into the minimum 20 feet side yard of the Hawaii County Zoning Code.

3. It appears the site plans attached to the detailed building construction plans to construct the first dwelling and the ohana dwelling and the water tanks 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. Both building permits to construct the existing dwellings and water tanks were closed by the DPW.

4. The site plan drawing, drawn to scale and submitted with the variance application, identifies the existing dwelling and water tank and building setback lines on the subject property . The site plan identifies the location of the water tank building encroachments 4.22 feet within one of the property's two side yards. Furthermore, the site plan denotes the distances between the respective water tanks and the affected boundary lines. Pursuant to the applicant the height of the existing dog kennel and tool shed buildings, located approximately 150 feet from the front property, are not over 6 feet.

5. The applicant's "Variance Application (ATTACHMENT)", states in part:

"As of 6-16-99 my property located at 15-1810 Ohe Street in HPP has been sold. During a recent survey my catchment tank located next to my front house has been found to be 15.78' from my side yard boundary. Island Title Corporation has informed me that I will have to address this problem and have agreed with me and the new owners that a variance should be applied for. The reason for this variance is because the tank is a corrugated (sic) steel tank and sits on a concrete foundation, moving it would involve a lot of time and money.(sic) Properties to the right and left and also rear are forested and undeveloped. The dog pens located next to the driveway are less than 6' in height and should not be considered as structured. (sic) All other structures on property conforms to county codes. I humbly ask for your approval."

6. The Department of Finance-Real Property Tax memorandum dated July 22, 1999, in the subject variance file states in part:

Comments from the Appraisal Section: "There are no comments at this time"

Comments from the collection section: "Current"

7. The State Department of Health (DOH) memorandum dated July 28, 1999, in the subject variance file states:

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

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

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

9. Proof of mailing was submitted on August 2, 1999. One objection letter dated August 9, 1999 from Patricia Merriman Byrd was received on August 17, 1999 and incorporated into the record on August 24, 1999.

The applicant submitted a site plan which identifies the location of an existing dwellings and water tanks. The site plan submitted identifies the distances between the water tanks and the affected boundary lines. A portions of one of the two water tanks 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/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 owner/applicant. Alternatives available to the owner/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 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 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, and the existing and surrounding land patterns. It appears a portion of one of the two existing water tanks built and established 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 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 permits 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 July 19, 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:

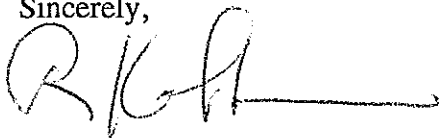
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is September 7, 1999.

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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 one of the two existing water tanks 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, submitted with variance application on July 7, 1999 to remain on the subject property.
4. Existing and 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,



VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp

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c: Real Property Tax Office