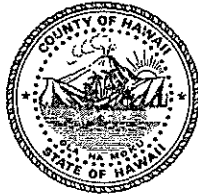


Stephen K. Yamashiro
Mayor



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

Z 095 324 947

October 6, 1999

Mr. Steven A. Hirakami
P. O. Box 27
Pahoa, HI 96778

Dear Mr. Hirakami:

Variance Permit No. 1054 (VAR 99-066)
Applicant: STEVEN A. HIRAKAMI
Owners: STEVEN A. HIRAKAMI, ETAL.
Request: Existing Dwelling/Accessory Building:
Variance From Minimum Yards, and Permitted
Projections Into Yards and Open Spaces, Pursuant
to Chapter 25, of the Hawaii County Zoning Code
Tax Map Key: 1-2-017:008, Lot 7

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow portions of an existing dwelling to remain upon Lot 7 with a minimum a rear yard of 3 feet 10 inches and open space of 3 feet 10 inches in lieu of the minimum 15 feet rear yard and 10 feet clear space requirements, respectively, and to allow portions of an accessory building to remain with a side yard of 4 feet 6 inches and open space of 2 feet 6 inches in lieu of the minimum 8 feet side yard and 4 feet clear space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-56, Minimum yards, Section 25-5-57, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted Projections Into Yards and Open Spaces, respectively.

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FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow a portions the existing dwelling built within the required minimum rear yard and portions of an existing accessory building built within the side yards and the respective associated open spaces should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property containing 7579 square feet is Lot 7, being a Portion of Grant 7124, Lot 29-A, Portion of Kaimu-Makena Homesteads, Puna, Hawaii. The non-conforming sized parcel is zoned Residential and Agricultural Districts (RA-.5a) by the County and designated Urban "U" by the State Land Use Commission (LUC). The property is within the County's Special Management Area (SMA).
2. The applicant's attachments state in part:

"The reason for requesting this variance is to allow the existing structures to remain in their locations. Relying on a recent survey on neighboring property: 3-1-2-17-10, the existing dwelling was found to be situated in the rear setback area. Also noted was that the existing utility building which used to house a chicken coop and wind generation apparatus is situated in the side setback area. Both of the neighboring parcels were heavily forested in milo and christmas berry trees when the project began in the mid-1970's. Both lots remain undeveloped, and 3-1-2-17-10 was partially inundated by lava in October of 1990. This lot has recently been purchased by H. Dwight Stevens who has hand-cleared the middle section of his one acre (approximate) parcel.

As a result of the aforementioned survey, a boundary line was stretched across the rear and right side boundaries. The dwelling's eave is located 4'0" from the rear lot line but the chimney wall lies 3'10" to the lot line. The setback limitations for this area is 15' and the open area is 10'. The utility building is in the right side setback area. The closest point from the eave of that structure to the side lot line is 2'6". The side setback is 8' and the open area setback is 4'. As indicated by planner, William Yamanoha, at the time of the construction, the rear setback did not come into play for utility buildings.

The applicants, Steve and Lynda Hirakami, purchased the property from Elizabeth Sue Ellis, daughter of Robert and Georgia Ross, shortly after the lava

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flow. The improvements were in disrepair and the purchase was made in an "as is" condition. The applicants were totally unaware of any zoning violations when they made the purchase. No surveys were made prior to the purchase of the property, and the former existing exterior walls are constructed with lava rock, moving the house out of the setback area would be restrictive, if not impossible.

We, the applicants, would like to resolve this matter by taking the necessary steps to get the variance needed to allow the existing structures to remain where they are. This request is for setback problems only and does not involve any structures encroaching beyond the property boundaries. This house was one of the few that escaped the 1990 lava flow, and in fact, the lava flow came very near to the property and actually passed by a seaward route. It remains as a example of how the people of Kalapana and Kaimu endured one of Nature's creation as well as destruction."

3. The site plan, drawn to scale and dated November 10, 1998, submitted with the variance application identifies the location of the existing building improvements and identifies the encroachments, cesspool location, and driveway connection via the existing privately owned beach road or right-of-way.
4. The applicant did not submit any copies recent copies of a recent information/memorandum or copies of original building plans or copies of the building permits to permit construct the existing building improvements located on the subject TMK parcel. Copies of a the original building permits and memorandum date March 30, 1999 were obtained by the Planning Department from the Department of Public Work (DPW), Building Division. It appears that the existing dwelling and storage building were constructed under a series of 4 building permits and one electric only permit (B No(s). 761740, 792074, 792075, 792370, and E65980 were issued to construct the existing building improvement on the subject TMK parcel). It appears the existing building improvement shown on the applicant's site plan were established on the TMK parcel by 1980.

A copy of a recent DPW-Building Division memorandum dated March 30, 1999 states in part:

"SUBJECT: Request for information-TMK: 1-2-017:008

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Building Permit 761740, issued 8/09/76 to R.J. Ross as Owner/Builder for a new 10' x 14' storage shed. Final inspection approved 1/18/80.

Building Permit 792074, issued 8/03/79 to Elizabeth Sue Ellis as Owner/Builder for a new 15' x 15' chicken coop. Final inspection approved 1/18/80.

Building Permit 792075, issued 8/03/79 to Elizabeth Sue Ellis as Owner/Builder for an addition of 1 bedroom, kitchen, bathroom & lanai to the existing storage shed for a conversion to a dwelling. 24' x 30', 8' x 24' enclosed area w/ 6' x 10' porch was completed prior to obtaining permit. No status of inspections available as information was taken directly from the original application form. Related Electrical Permit E53989, issued 9/20/70 to A. Akahoshi was filed without any status of inspections.

Building Permit 792370, issued 9/05/79 to Elizabeth Sue Ellis as Owner/Builder for a new shop w/wing generator tower. Final inspection approved 1/18/80.

Electrical Only Permit E65980, issued 4/18/85 to AHK Electric had final inspection approved, no date by inspector."

In view of the above memorandum, it appears that building inspections by the affected government agencies of the dwelling and other site improvements occurred during construction of the building improvements on the property. However it that Building Permit 792075 was filed with any status of inspections and is still open and must be addressed by the current owner(s) or their authorized designee (See variance conditions).

The existing building improvements and site improvements constructed on the property were sold to the current owners: Mr. and Mrs. Hirakami, "AS BUILT". The building encroachments discovered within the rear and affected side yards were discovered after a modern survey of an adjacent parcel was ordered by the neighbor and performed by a registered land surveyor.

5. Pursuant to a recent site inspection of the property, there are existing perimeter landscaping materials (shrubs, lawn, palms, trees etc.) planted on the property and along the rear and affected side boundary lines. These landscaping materials act as a buffer to screen the building encroachments from the adjacent parcels and the private road right-of-way.

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6. The Department of Public Works (DPW) memorandum dated August 18, 1999, 1998, states in part:

"We have reviewed the subject application and have only the following comment.

1. Ross Road, fronting the subject property, is a private road."

7. The Department of Health memorandum dated August 11, 1999, states:

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

8. The memorandum from the Department of Finance-Real Property Tax Office dated August 19, 1999, for "1-2-017-008" states in part:

"There are no comments at this time

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

9. a. The Planning Department received a phone call from Thomas E. Bowen, M.D., (TMK: 1-2-017:016 and 017) to discuss the variance application background and request. The need for the retention of existing landscaping shrubs growing near and along the affected building encroachments on both sides of the common boundary line.

For the record, Dr. Bowen's concerns regarding existing landscaping buffers near and along the affected property lines were considered during a site inspection of the property and shall be addressed in the variance conditions below.

- b. The Planning Department received an letter dated August 30, 1999 from Harold D. Stevens on September 7, 1999. The letter states in part:

"I am writing in regard to the application for variance for TMK 1-2-017:008, Lot 7. I own the property adjacent to that property, TMK 1-2-017:010. Given that the house is on a concrete slab and constructed of stone, and given the geography of the lots I am in favor of the variance and support the county's issuance of the variance."

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For the record, we understand that Mr. Stevens is purchasing the subject TMK parcel and existing building improvement situated thereon from the current owners, Steven and Lynda Hirakami.

The present owners submitted a copy of a recent site or plot plan, drawn to scale, which identifies the location of the existing dwelling unit and accessory building which were constructed within the minimum building yards. The site plan identifies and denotes the distances between the building encroachments from the affected rear yard and side yards. For the record the plot plan submittal does not identify and show the location of all existing landscaping improvements and fences on the subject property.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building improvements, 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 owner. Alternatives available to the owner include removing or reconstructing the existing dwelling within the buildable area prescribed by the Zoning Code. The existing building's proportion and staircase encroachments are architecturally compatible.

The Planning Department acknowledges there may be design or building alternatives available to the owner other than those recited above. However, in view of the building permits and electrical permits issued to date, further design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners when a more reasonable alternative is available by the granting of the subject variance request. However, the requirements of the open and original building permit issued to the previous owner must be addressed by the current owners and satisfied.

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 proposed setback variances will not hinder adequate light and air circulation around the proposed dwelling. In view of similar older dwelling combinations within the immediate neighborhood, the existing dwelling will not depreciate or detract from the character of the property or surrounding neighborhood. It appears the existing building improvements have not

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visually or physically adversely affect the rights of the property owners of the adjacent or surrounding properties since 1980. Therefore, it is felt the existing encroachments within the rear and affected rear yards will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was deemed complete on July 30, 1999, and was acknowledged by Certified Letter dated August 6, 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 owner, assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is October 4, 1999.
2. The approval of this variance from the Zoning Code pertains only to the affected portions of the existing dwelling and accessory storage building. The 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 owner or 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 nature of the variance request and location of the existing dwelling and accessory storage building on the property will not meet the provision of the Zoning Code regarding minimum yards and corresponding permitted projections into yards and open spaces. The approval of this variance is from the Zoning Code only and allows portions of the affected dwelling and accessory building to be remain on and within the subject property pursuant to the site plan submitted with variance application and/shall meet current DPW building code requirements including approval of all necessary building permits.

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The current owners or their authorized designee shall contact the DPW-Building Division in Hilo to address and close Building Permit No. 792075 and any other outstanding building permits issued to construct the existing building improvement shown on the site plan dated July 7, 1999.

4. The owners, successors or assigns shall plan and/or maintain the existing landscaping materials or any permitted architectural landscape buffers on the subject property between the building encroachments and the rear and affected side property lines. The permitted and existing planting materials shall be healthy and free of plant debris.
5. Ohana dwelling units are prohibited on subject TMK parcel. Future building improvements and permitted uses on the subject property 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
F:\WP60\WRY\FORMLETT\VARAP117.ZC1

xc: Real Property Tax Office
DPW-Building Division-Hilo

Thomas E. Bowen, M.D.
6304 Lake Sunrise Drive
Apollo Beach, FL 33572-2303

Central Pacific Bank (CPB-Hilo Branch)
Attn: Mrs. Christine Arafiles
525 Kilauea Avenue
Hilo, HI 96720