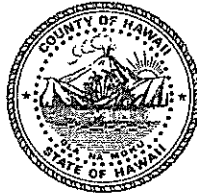


Stephen K. Yamashiro
Mayor



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 095 324 984

October 14, 1999

Ms. Marilyn Andrews
1245 13th Avenue N.
Naples, FL 34102

Dear Ms. Andrews:

VARIANCE PERMIT NO. 1056 (VAR 99 -071)

Applicant: MARILYN ANDREWS

Owners: MARILYN ANDREWS, ET AL.

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: 1-5-016:052

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. 1056 allows the portions of an existing two story dwelling "AS BUILT" to remain on the property with a side yard of 12.42 to 13.15 feet and 8.03 feet open space from the affected side yard, 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, Section 25-5-77, Other regulations, 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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OCT 14 1999

Ms. Marilyn Andrews

Page 2

October 14, 1999

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 1.00 acre is Lot 375, Portion of Block 8, Land Court Application 1053, Map 60, Keaau, Puna, Hawaii. The property's address is 15-1906 30th. Avenue.
2. It appears that the existing building improvements were constructed under two (2) building permits (B No. 47971 and B No. 55145) issued in 1971 and 1973, respectively, 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 dwelling, water tank, and other related site improvements 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.
4. The site plan drawing, drawn to scale and dated July 29, 1999, by The Independent Hawaii Surveyors, identifies the existing dwelling, carport, and water tank on the subject property.
5. The applicant's letter dated August 2, 1999 states in part:

"My house in Hawaiian Paradise Park has been for sale approximately six years. Finally, I have a contract to sell it (At a Great Loss) with closing scheduled for August 15, 1999.

Unfortunately, during the survey July 30th, it was discovered that the house is 12.42' from the side boundary, or 7.58' into the setback at the rear right corner. The roof is 8.03' from the setback.

I bought the house in 1994 and of course had absolutely no knowledge of the situation which I do not feel I am responsible for, as I did not create it.

Currently, the house is not rented and I worry about vandals, etc. I need to sell it as soon as possible, so I need a variance so that the purchaser can get her loan and take title. The mortgage payment on the unrented house are a hardship to me.

Ms. Marilyn Andrews
Page 3
October 14, 1999

I have acted with speed to set the application in process which is no small feat from so far away.

I shall comply with any and all requirements from your office."

6. The Department of Finance-Real Property Tax memorandum dated August 30, 1999, in the subject variance file states in part:

"There are no comments at this time"

"Current Real Property taxes are paid through December 31, 1999."

7. The State Department of Health (DOH) memorandum dated September 2, 1999, in the subject variance file states:

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

8. The Department of Public Works (DPW) memorandum dated August 30, 1999, in the subject variance file states in part:

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

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. All roads within Hawaiian Paradise Park subdivision are private roads."

The attached DPW-Building Division memorandum dated August 26, 1999 states in part:

"Approval of the application shall be conditioned on the comments as noted below.

*Residential structures-3 ft. side, 3 ft. rear"

Ms. Marilyn Andrews
Page 4
October 14, 1999

9. Proof of serving first and second mailing of notice to the owners and lessees of record of all lots within five hundred feet was submitted by the applicant. No objections to the variance application were received from the surrounding property owners or lessees of record.

The present owners/applicant submitted a site plan which identifies the location of an existing dwelling and related building improvements. The site plan submitted identifies the distances between the dwelling and the affected side boundary line. Portions of the existing dwelling 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 owners/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/applicant. 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 current owners, on their own volition, are honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the previous or current owners or 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 applicant when a more reasonable alternative is available by the granting of the subject variance request.

Ms. Marilyn Andrews
Page 5
October 14, 1999

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 previous owner under a series of two (2) building permits nearly 30 years ago. Building inspections of the premises, during building construction and throughout the life of both building permits did not disclose any building setback irregularities. The current owners or applicant were not aware of all the 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 a side yard. The existing building encroachments are not physically and visually obtrusive from the existing right-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 building encroachments built and established in 1971 have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. 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 created and induced by an accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction by the previous owner. 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 August 25, 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/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is October 14, 1999.

Ms. Marilyn Andrews

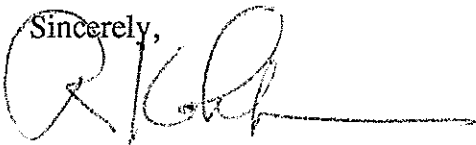
Page 6

October 14, 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.
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 water tank identified on the plot or site plan dated July 29, 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,



VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp

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c: Real Property Tax Office