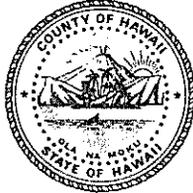


Stephen K. Yamashiro
Mayor



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 095 324 456

December 22, 1999

Mr. Michael Dalton
P O Box 813
Pahoa, HI 96778

Dear Mr. Dalton:

VARIANCE PERMIT NO. 1082 (VAR 99-089)

Applicant: MICHAEL DALTON

Owner: MICHAEL DALTON

Request: Variance From Minimum Yards,

Pursuant to Chapter 25, Zoning

Ratified April 6, 1999

Tax Map Key: 1-3-040:003, Lot 49

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. 1082 allows the portions of an existing dwelling "AS BUILT" to remain on the property with a side yard of 6 feet and 3 feet open space from the affected side yard, in lieu of the minimum 20 feet and minimum open space of 14 feet, respectively, 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.

Please accept our apology for this tardy confirmation of the approval granted to allow the requested variance. This department recently modified the word processing program and efficiency of this process which will hopefully result in more timely responses to future applications. In addition copies of the original building permits issued to the previous owners were required to understand building history. Your patience is appreciated.

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12/23/99

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:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 1.001 acres is Lot 39, Portion of Block 11, F. P. 672, Leilani Estates Subdivision, Keahialaka, Puna, Hawaii.
2. It appears that the existing dwelling and water tank building improvements were constructed under 2 separate building permits (B No. 54310 and 54473) that were issued in 1972 by the Department of Public Works (DPW), Building Division in Hilo. Both building permits were closed by the DPW-Building Division on January 30, 1973.
3. It appears the site plans attached to the detailed building construction plans for the dwelling 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 by the applicant, identifies the existing dwelling and building encroachments located on the subject property.
5. The written description submitted by the applicant dated August 25, 1999 states in part:

"I recently purchased my home in Leilani Estates (8 July 99.) After the close of escrow it came to my attention that my home was built within the side building setback (see attached scale drawing.)

I am requesting a variance (1) so that my property will be legal, and (2) so that any future buyer will be able to obtain conventional financing to buy it.

Since my home was built in 1974 and is built on a concrete slab foundation, I can not see any reasonable alternative--the home can't be moved. I do not think that granting this variance would be any problem to the nearest adjacent property, as it is also a 1-acre parcel with many possible building sites. It certainly would not be materially detrimental to the public welfare or cause any adverse impact to either the area's character or to adjoining properties."

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6. No comments were received from the Department of Finance-Real Property Tax Office. However, for the record and pursuant to a real property tax clearance certificate dated August 30, 1999, the owner of record has paid all real property taxes due the County of Hawaii up to and including December 31, 1999.
7. The State Department of Health (DOH) memorandum dated October 19, 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 October 21, 1999, in the subject variance file states in part:

"We have reviewed the subject application and have the following comment. The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear."
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 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 and roof eave 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.

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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 owner 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.

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 dwelling and other site improvements were constructed by a previous owner under a building permit nearly 27 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 owner and applicant were not aware of any building encroachments until after the closing of escrow.

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 the early 1970s 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 October 15, 1999. Additional time to review the subject variance application by the participating agencies and copies of original building permit records were required.

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

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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 December 21, 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 dwelling identified on the plot or site plan submitted with the variance application 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:gp
p:\WP60\WRY\FORMLETT\VARAPPDALTON

c: Real Property Tax Office