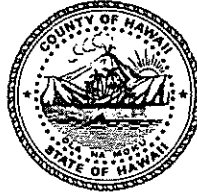


Stephen K. Yamashiro
Mayor



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 095 324 454

January 15, 1999

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

Dear Ms. Andrews:

Variance Permit No. 980 (VAR 98-79)
Applicant: MARILYN ANDREWS
Owner: MARILYN ANDREWS
Request: Variance From the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,
December 7, 1996
Tax Map Key: 1-5-016:053, Lot 374

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. 980 allows the dwelling's existing water tank to remain on the subject property with a side yard of 18.18 feet in lieu of the minimum 20 feet from the respective side yards as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum side yard should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 1.00 acre is Lot 374, Block 8, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii. The property's address is 15-1898 30th Avenue.
2. It appears that the existing dwelling was originally constructed in 1969 and 1970 under several building permits issued to Kenneth T. Lynch, Et al. by the Department of Public Works (DPW), Building Division in Hilo.
3. In 1977 a building permit was issued Kenneth T. Lynch to construct a "new jacuzzi sauna".
4. It appears the original site plans and building construction plans submitted with the approved building permits in 1969 and 1970 to construct the dwelling and water tank were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and other affected government agencies of all building improvements on the property.
5. The site plan drawing, drawn to scale and dated November 25, 1998, by the Independent Hawaii Surveyors, identifies the existing structures on the subject property. The site plan accurately denotes the minimum building setbacks required for the subject property.
6. The applicant's explanation or reasons dated November 14, 1998, states in part:

"In the process of selling my house which to close Dec. 15, 1998, the issue was discovered. No one knew it would be a problem as it was not when I bought the property in 1988.

The tank is 11' x 11' x 8' and matches the house attractively. To replace it with a homely dough-boy-type catchment would ruin the integrity of the property.

So that a clear title can be obtained for this property I would so appreciate a variance as soon as you are able to process it."

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7. The Department of Water Supply memorandum dated December 30, 1998, in the variance file states in part:

"We have reviewed the subject application. This parcel is on a catchment system since we do not have a water system in this area."

8. The Department of Finance-Real Property Tax memorandum dated January 11, 1999, in variance file states in part:

"There are no rollback tax consequences

Real Property taxes are paid through December 31, 1998."

9. The State Department of Health (DOH) memorandum dated December 16, 1998, in the variance file states:

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

10. The Department of Public Works-Building Division memorandum dated January 14, 1999 states:

"We have no comments or objections to the application."

11. No objections to the variance application were received from the surrounding property owners.

The present owner/applicant submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the water tank from the affected side boundary line. The existing water tank 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.

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ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owner/applicant. Alternatives available to the 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 water tank would be economically unreasonable and may disrupt other existing site improvements.

The current owner or applicant, on her own volition, is honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the previous owners and 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 owner 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 water tank was constructed under a valid building permit and issued in the early 1970s by the previous owners. Building inspections of the premises, during building construction and throughout the life of the original building permit in 1970 did not disclose any water tank setback irregularities. The current owner or applicant was not aware of the encroachment problem when she purchased the property in 1988.

The circumstances which permitted the water tank to be built on the non-conforming sized property are unique. The existing building encroachments have been built within the side yards of the property. The existing building encroachments are not physically and visually obtrusive from the existing rights-of-way. It appears the water tank's encroachment does not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears, the existing water tank building's "footprint" and building encroachments built and established recently within the property's side yard have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the proposed water tank building encroachments will not detract from the character of the immediate neighborhood or

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the subdivision. It appears the existing building encroachments on the property and within the property's side yard were created and induced by a cumulation of mapping discrepancies and interpretation of the minimum yards during building permit review. Inspection of the property in the 1970's during the life of the building permits by government agencies did not discover any building encroachment or disclose any irregular water tank building setback problems. The existing water tank is not considered as "living area".

The subject variance application was deemed complete on November 16, 1998.

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 January 15, 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 water tank 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 November 25, 1998 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.

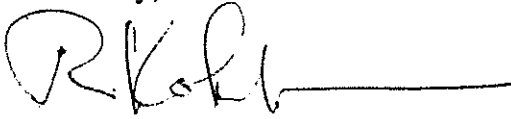
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Goldstein", followed by a horizontal line extending to the right.

VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:jkg

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c: Real Property Tax Office