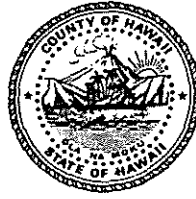


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED MAIL
Z 095 324 320

February 19, 1999

Mr. Clint E. Carlson
P. O. Box 1197
Kurtistown, HI 96760

Dear Mr. Carlson:

Variance Permit No. 991 (VAR 98-86)
Applicant: CLINT E. CARLSON
Owner: CLINT E. CARLSON
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: 1-5-039:157

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. 991 allows portions of an existing dwelling to remain on the property with a side yard of 5.67 feet to 15.38 feet in lieu of the minimum 20 feet from the respective side yard as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 1.00 acre is Lot 189, Block 5, Land Court 1053, Map 57 Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii. The property's address is 15-1678 23rd Avenue.

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2. It appears that the existing dwelling was originally being constructed under a building permit (B NO. 871346) issued to Deborah Beaumont in 1987 by the Department of Public Works (DPW), Building Division in Hilo. Pursuant to County records B NO. 871346 is still an active building permit.
3. Pursuant to a recent Planning Department site inspection of the property it appears the dwelling was never finished.
4. It appears the original site plans and building construction plans submitted with the approved building permits in 1987 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 14, 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 attachment "APPLICANT'S REASONS FOR REQUESTING A VARIANCE" states in part:

"I am requesting a variance that the water catchment tank and dwelling on 3/1-5-039-157 be allowed to remain in place encroaching into the side County Zoning Code building setback for the following reasons:

1. I recently purchased the property and was unaware of the existing set back violation.
2. The Independent Hawaii Surveyors report (scale drawing attached) shows the need for a variance.
3. I have contacted the property owners next door and asked if they would be willing to consolidate the properties and re-subdivide. (See attached letter) this was not acceptable.
4. They are anxious to see this home completed and cleaned up.
5. Tearing down the house and moving it would create a financial hardship

to me as Hawaii's property values have decreased and I have a limited budget for improving this property.

6. This condition had been existing for 11 years."
7. The Department of Finance-Real Property Tax memorandum dated January 28, 1999, in variance file states in part:

"There are no comments at this time
Real Property taxes are paid through December 31, 1998."
8. The State Department of Health (DOH) memorandum dated January 28, 1999, in the variance file states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
9. The Department of Public Works (DPW) memorandum dated February 12, 1999 states:

"We have reviewed the subject application and our comment is as follows:

All new building construction shall conform to current code requirements."
10. One objection to the variance application was received from the owner of TMK: 1-5-039:156. A copy of applicant's letter dated February 4, 1999 responding to complainant was received by the Planning Department.

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 and a portion of the dwelling are being 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 current 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 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 and dwelling would be economically unreasonable and may disrupt other existing site improvements. A proposal to consolidate an adjacent property (parcel 158) and resubdivide the resulting consolidation equally to avoid a variance was not acceptable.

The current owner or applicant, on his 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 owner 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 dwelling and water tank was constructed under a valid building permit and issued in the early 1987 by the previous owner(s). Building inspections of the premises, during building construction and throughout the life of the original building permit in 1987 did not disclose any water tank setback irregularities.

The circumstances which permitted the existing water tank to be built on the 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 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 a portion of the existing dwelling and water tank encroachments built and established 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 existing building encroachments will not

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detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the property and within the property's side yard were created and induced by accumulation of mapping discrepancies and interpretation of the minimum yards during building permit review. Original building inspections of the property in the 1987 by government agencies did not discover any building encroachment or disclose any irregular building setback problems. The water tank by itself is not considered a "living area".

The subject variance application was acknowledged by certified letter dated January 25, 1999. Pursuant to a recent December 1998 ruling and court decision, additional time to consider the processing requirements of variance applications from the Zoning Code was necessary.

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 February 19, 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 water tank and portion of the existing dwelling being constructed 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 14, 1998 to remain on the subject property.
4. The applicant/owner shall complete the building improvements sanctioned under

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B NO. 871346. A landscaping buffer shall be installed on the subject property between the affected side property line and deck building improvements.

5. 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
Theodore K. Ramel