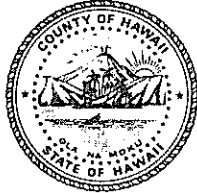


Stephen K. Yamashiro
Mayor



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

7099 3220 0000 4869 6414

June 5, 2000

Mr. Dewey Meadows
P. O. Box 2247
Pahoa, HI 96778

Dear Mr. Meadows:

VARIANCE PERMIT NO. 1123 (VAR 00-013)
Applicant: DEWEY MEADOWS
Owner: DEWEY MEADOWS
Request: Variance From Minimum Yards,
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-2-024:022

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. 1123 allows portions of an existing dwelling "AS BUILT" to remain on the subject property with a minimum rear yard of 11.45 feet and open space of 3.30 feet in lieu of the minimum 15 feet rear yard and 10 feet open space requirements, respectively, and, to allow a portion of the existing water tank (approximately 4.5 feet height) to remain 0.55 feet within a side yard in lieu of the minimum 8 feet side yard, 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.

Please accept our sincere apology for this tardy confirmation of the approval to allow the requested variance. Additional time to secure and study a copy of the original approved site and building permit was necessary. Your patience is appreciated.

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JUN 06 2000

FINDINGS AND RECOMMENDATION

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 7750 square feet is Lot 844, Black Sand Beach Subdivision, Situated at Kikala-Keokea, Puna, Hawaii.

It appears the subject property was designated Agriculture "A" by the State Land Use Commission (SLUC) and zoned Agricultural (A-1a) in 1967 by the County. The parcel's width and area are less than the minimum building width and minimum area requirements of the Zoning Code. The subject lot was legally subdivided and created prior to the adoption Zoning Code in 1967. Lot 844 is considered to be a legal non-conforming sized parcel.

2. It appears that the existing dwelling, water tank, and other related site improvements are being constructed under building permit (B NO. 951284) issued in by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the original site plans attached to the original building drawing 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 map showing existing conditions, drawn to scale and dated December 31, 1999, by the Independent Hawaii Surveyors, identifies the existing dwelling and water tank building encroachments located on the subject property.
5. The applicant's attachment dated "JAN. 20, 2000" states in part:

"TO WHOM IT MAY CONCERN,
THE REAR BOUNDRY PROPERTY PINS SHOWN BY THE PREVIOUS
OWNER WERE INCORRECT AND THE BUYER WAIVED THE PIN
STAKING SURVEY UPON PURCHASE, (sic) DO TO THIS
MISINTERPRETATION OF THE PINS. HAVING DONE SO, THIS
RESULTED IN THE HOUSE BEING BUILT WITHIN THE SETBACK."

Note: The listed request on the variance application and above narrative does not acknowledge or address the water tank encroachment into the side yard. Pursuant to the applicant, the water tank's overall height, including cover, is below 5 feet. Upon further review of the site plan submittals and discussion with the owner(s), it appears the existing water tank was inadvertently built 0.55 feet or approximately 7 inches into the affected side yard. As such, in addition to the original variance request to allow the existing dwelling to remain within the affected rear and open space areas cited above, the water tank encroachment into the affected side yard must be addressed.

6. The Department of Finance-Real Property Tax Office memorandum dated February 10, 2000 states in part:

"There are no comments at this time"

"Current Real Property taxes are paid through June 30, 2000."

7. The State Department of Health (DOH) memorandum dated February 10, 2000, in the subject variance file states:

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

8. The Department of Public Works (DPW) memorandum dated February 7, 2000, in the subject variance file states in part:

"We have reviewed the subject application forwarded by your memo dated February 7, 2000 and have the following comments.

We oppose approval of the application for the reasons noted below.

1. Building permit 951284 for the subject dwelling was never finalized.
2. The projections do not meet setback requirements and should be corrected. Existing code for this permit requires 10'-0" setback.

Please refer questions regarding building requirements to the Building Division at 961-8331."

Mr. Dewey Meadows
Page 4
June 5, 2000

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's representative. For the record, a written response dated February 20, 2000 was received by the Planning Department.

The applicant submitted two (2) site plans, which identifies the location of an existing dwelling, water tank, and other related building improvements. Only the site plan received from "The Independent Hawaii Surveyors", identifies all building encroachments and distances between the encroachments from the respective boundary line(s). Portions of the existing dwelling were constructed within the affected rear yard and a portion of the water tank was constructed within one of the property's two side yards.

Therefore, considering the foregoing facts, it is felt that 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 and water tank would be economically unreasonable and may disrupt other existing site improvements.

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 affected portions of the existing dwelling and other site improvements are being constructed under a building permit issued by Hawaii County. The current owner and applicant did not discover the encroachments until a modern survey of the property was prepared for the property.

Mr. Dewey Meadows
Page 5
June 5, 2000

The circumstances, which permitted the existing building improvements to be built on the property, are unique. The existing building encroachments have been built within the rear and one of the two side yards. 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 on the property 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 yards were created and induced by an accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction by the applicant. Inspection of the property during the life of the building permit by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department on February 1, 2000 and acknowledged by certified letter dated February 7, 2000. Additional time to review the subject variance application by the participating agencies.

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.
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.

Mr. Dewey Meadows
Page 6
June 5, 2000

3. Portions of the existing dwelling and water tank located on the subject property will not meet Chapter 25, the Zoning Code's, minimum yard and related permitted projections into yards and open space requirements. The approval of this variance allows the affected portion of the existing dwelling within the rear yard and water tank within the affected side yard identified on the site plan submitted with the variance application to remain on the subject property. The applicant shall complete the building improvements under BP NO. 951284 and obtain final inspection prior to any transfer of title and conveyance of 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, minimum building yards, 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
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c: Real Property Tax Office
DPW-Building Division (Mr. Patrick Tanihiro)