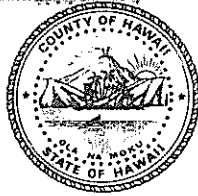


Stephen K. Yamashiro
Mayor



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 0009

July 18, 2000

Mr. John B. Bartholomew
HCR 2 Box 6630
Keaau, HI 96749

Dear Mr. Bartholomew:

VARIANCE PERMIT NO. 1141 (VAR 00-040)
Applicants: JOHN B. BARTHOLOMEW, ETAL.
Owners: JOHN B. BARTHOLOMEW, ETAL.
Request: Variance from the Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-5-039:204

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. 1141 allows portions of an existing dwelling, shed, and water tank to remain on the subject lot, "AS BUILT", with a minimum side yard(s) of 15.34 feet, 16.39 feet, and 11.16 feet, respectively, in lieu of the minimum 20 feet side yard(s) and the corresponding open space(s) of 12.34 feet +/-, 14.39 feet +/-, and 11.16 feet +/-, respectively, in lieu of the minimum 14 feet open space requirement as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and 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 affected side yards and respective open space requirements 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 142, Block 5, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii. The property address is 15-1641 24th Avenue.

The property is zoned Agricultural (A-1a) by the County.

2. It appears the existing building improvements were constructed under two (2) building permits. B No. 922257 (Dwelling) and B No. 922258 (Carport /Storage), respectively, were issued in 1992 by the Department of Public Works (DPW), Building Division in Hilo to the applicant(s)/owner(s).
3. It appears the site plans attached to the detailed building construction plans for the original dwelling and carpet/storage building 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. B No. 922257 and B No. 922258 were opened on November 5, 1992 and closed on June 16, 1993, respectively, by the DPW-Building Division.
4. The site plan drawing, drawn to scale and dated May 17, 2000, by Independent Hawaii Surveyors, identifies the existing building encroachments into the affected side yard(s). Portions of the existing buildings encroach between 3.61 to 8.84 feet into the affected side yards.
5. The applicant's attachment, dated May 23, 2000, states in part:

"We are applying to your department for a variance from the zoning code for the following property: TMK-3-1-5-39-204. The reasons for this variance are as follows:

1. The northwest wall of the house is located 15.34 feet from the side property line instead of the required 20 feet. See enclosed surveyors map.
2. The Water Tank is located 11.16 feet from the side property line instead of the required 20 feet. See enclosed surveyors map.
3. The southeast wall of the storage shed is located 16.39 feet from the side property line instead of the required 20 feet (sic) See enclosed surveyors map.

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The above structures are existing structures therefore there is no other reasonable alternatives. Thank you for your consideration of this request.”

Note: The “surveyors map” mentioned in the above statements refer to the scale-drawn plot plan dated May 23, 2000 prepared by The Independent Hawaii Surveyors. In addition, the applicant’s building permit (B No. 000926) for the “SHED” is subject to resolve of the subject variance application and will be addressed and included in the variance conditions.

6. The Department of Public Works (DPW) memorandum dated June 15, 2000, states in part:

“We have reviewed the subject application forwarded by your memo dated May 30, 2000 and have no comments or objections to the request.”

Note: The status of the pending building permit for the shed will be addressed prior to any changes in title and any future conveyance of the property

7. The Department of Finance-Real Property Tax memorandum dated June 7, 2000, in the variance file states in part:

“There are no comments at this time”

“Current”

“Remarks: Real Property taxes are paid through June 30, 2000.”

8. The State Department of Health (DOH) memorandum dated June 14, 2000, in the subject variance file states:

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

9. The applicant’s representative submitted copies of the first notice and second notice and mailing receipts showing that first and second notice was mailed to the designated surrounding property owners or lessees. The Planning Director examined the proof

One telephone objection to the variance application was received by the Planning Department on July 3, 2000 from the owner(s) of TMK: (3) 1-5-039:204, Lot 144.

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The applicant and owner submitted a site plan which showing the location of the existing dwelling, accessory buildings, and other existing site improvements dated May 17, 2000. The site plan submitted identifies the distances between the dwelling and shed and affected side property lines. Pursuant to the Zoning Code, portions of the existing dwelling, water tank, and shed encroach into the respective 20 feet wide side yard(s) and portions of the water tank do not meet the minimum 14 feet open space requirement.

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 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 applicants. Alternatives available to the applicant and owner(s) include the following: Removing the existing building encroachments within the side yards, relocating the water tank, and making corrections to the 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, water tank, and shed would be economically unreasonable and may disrupt the building's design and other existing building improvements.

The applicant(s)/owner(s) are honestly trying to resolve the recent building encroachment problem. No evidence has been found to show indifference or premeditation by the applicant(s)/owner(s) to deliberately or intentionally allow the building encroachment problems to occur during building construction. The building permits to permit the dwelling and water tank were closed by the DPW. The encroachments were discovered during a recent sale of the property.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant(s) and owner(s) 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 applicants 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. Building inspections of the premises, during building construction and throughout the life of the building permits issued to the applicant(s) or owner(s) did not disclose any building setback

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irregularities. The applicants were not aware of any encroachment problems until the modern survey was performed in conjunction with a sale of the property.

The circumstances, which permitted the existing building improvements to be built on the property and timing to address the building encroachment problems, are unique. The existing building encroachments have been built within the existing side yards and were completed prior to the sale of the property by the current owner(s). The existing building encroachments are not physically and visually obtrusive from the existing rights-of-way or the adjacent properties. No objections were received from the owner(s) of Lot 141 and Lot 143 (TMK: 1-5-039:205 and 203, respectively) with whom the applicant(s) share common side property lines. One telephone objection to the public notice requirements from the owner of TMK: 1-5-039:202, Lot 146, was received on July 3, 2000. As such, it appears the building encroachments do not depreciate or detract from the character of the lots immediately adjacent to the subject property or surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears that the existing encroachments within the respective side yards have not visually, physically or adversely affected the rights of the adjacent or surrounding property owners. 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(s) and respective open space requirements were caused by a unintentional mapping and building discrepancies or misinterpretation of the minimum side yards during building construction by the applicant(s) in the 1992. 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 May 30, 2000.

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.
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

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successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of the existing dwelling, water tank, and shed located on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yards and respective open space requirements. The approval of this variance allows the existing building encroachments within the respective side yard(s) identified on the plot or site plan dated May 17, 2000, to remain on the subject property.
4. The status of any outstanding building permit shall be addressed by the original permittees or owner(s) prior to any change in title and prior to any future conveyance of the subject property.
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:pak

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c: Real Property Tax Office