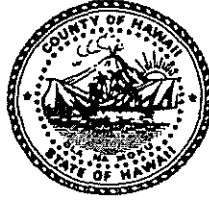


Harry Kim
Mayor



Christopher J. Yuen
Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

January 23, 2001

Mr. Patrick Daniel Sarsfield
P. O. Box 944
Volcano, HI 96785

Dear Mr. Sarsfield:

Variance Permit No. 1176 (VAR 00-080)
Applicant: PATRICK DANIEL SARFIELD
Owner: PATRICK DANIEL SARFIELD
Request: Variance From Minimum Yards
Pursuant to Chapter 25, of the Hawaii County Zoning Code
Tax Map Key: 1-9-008:080, Lot 4

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow portions of an existing dwelling "AS BUILT" to remain on a proposed lot (LOT 4-B) with a minimum 8 feet side yard and 4 feet clearspace from the respective side boundary line and allow portions of an existing water tank "AS BUILT" to remain upon a proposed lot (LOT 4-A) with a minimum 5 feet side yard and 2.5 feet clearspace from the respective side boundary line in lieu of the minimum 10 feet side yards and minimum 5 feet clearspace requirements, as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a), (2), (B), 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 to allow the existing dwelling and water tank to remain on Lot 4 based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property containing 39,644 square feet +/- is Lot 4 of the Mariner Tract Subdivision, Being a Portion of Grant 5418 to Martin Porter, Oloa, Puna, Hawaii. The property's address (Lot 4) is 19-4034 Kilauea Road.
2. The property was zoned Single-Family Residential (RS-10) by the County in 1967. The property is designated Urban "U" by the State Land Use Commission (LUC). The property is not within the County's Special Management Area (SMA).
3. The applicant's site plan and detailed drawings submitted with the variance application identifies the location of the existing dwelling(s) and water tank(s) located on Lot 4. The applicant submitted a subdivision application (SUB 00-044) which includes a preliminary plat map dated February 21, 2000, to subdivide Lot 4 into two (s) lots; LOT 4-A and LOT 4-B. Further action on the proposed 2-lot subdivision application has been deferred pending consideration of the subject variance and water variance (VAR 00-080).
4. It appears the existing dwellings, water tanks, and other related site improvements were constructed and established on the property under Building Permits (BP NO. 882039 and BP NO. 882041) issued to the applicant.

A site inspection by the Planning Department was conducted on November 20, 2000 to verify existing building terrain, building orientation, and the introduced and natural landscape improvements. The applicant/owner was present to help identify and interpret the existing boundary lines and further explain his design philosophy.

It appears that portions of the existing multi-story dwelling located on proposed lot (Lot 4-B) may be within the respective minimum 10 feet side yard and the 12,000 gallon water tank located on proposed lot (Lot 4-A) is within the respective minimum 10 feet side yards and respective minimum 5 feet clearspace required by the Zoning Code.

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5. The applicant's detailed written explanation, dated September 22, 2000, states in part:

"Revised: (sic) water tank location-Due to existing nature forest & wanted to remove only those old growth trees absolutely necessary to install water tank & pump shed on the property in late 1988 (sic).

The existing forest provides a buffer between the two side by side parcels (sic).

It would be a shame to cut down any trees in this incredibly lush area of old volcano village (sic)."

Note: The applicant's site plan denotes "Koa" and "Native Forest" or forested areas on the property and adjacent property.

6. No comments were received from the Department of Public Works.
7. The Department of Health memorandum dated November 8, 2000, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
8. The Department of Finance-Real Property Tax memorandum dated November 9, 2000 states in part:

"There are no rollback tax consequences."

"Current Real Property taxes are paid through December 31, 2000."
9. The applicant submitted a list of surrounding property owners and proof of mailing of the first and second notice to the surrounding property owners were mailed on September 25, 2000 and October 25, 2000, respectively. The Planning Department received several telephone calls and comments from an adjacent property owner. The adjacent property owner(s) articulated his/their concerns concerning the character of the neighborhood and these concerns will be addressed in the variance background below and variance conditions.

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The applicant/owner submitted a copy of a site or plot plan, drawn to scale, which identifies the location of the existing building improvements on the subject property. The site plan identifies the existing garage, 2-dwellings/2-water tank location(s). The site plan identifies and locates the distance between the affected 12,000 gallon water tank and the respective boundary line.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building improvements, 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 owner. Alternatives available to the owner include relocating or reconstructing the proposed building improvements within the remaining buildable area prescribed by the Zoning Code. The existing building's proportion, architectural style, and exterior building cosmetics are compatible and similar to other dwellings along the existing right-of-way and within the immediate neighborhood. It appears that the reluctance of the applicant/owner to cut down and remove older "Koa", etc. and other native and exotic trees growing within the building envelope and along and on affected side boundary lines after the issuance of the building permits may have resulted in the present building locations. The 12,000 gallon water tank building is a passive building and not considered to be a living space. Furthermore, the water tank is nestled and buffered by the existing mature "Native Forest" trees growing on and along both sides of the affected side boundary line.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant than those recited above. However, due to the existing forest on the subject property and adjacent property, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the 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 are to assure that adequate air and light circulation is available between permitted structure(s) and property or boundary lines. The proposed setback variance will not hinder adequate light and air circulation around the existing dwelling or adjacent parcels. The site plan submitted by the applicant identifies the location of existing forested "Native Forest" areas. The affected building

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encroachments are nestled among or near existing wooded forest areas located on the subject property. In view of similar dwelling/water tank combinations within the immediate neighborhood that were constructed prior to the adoption of the Zoning Code in 1967, it is felt that the existing location of building improvements among the existing grove of trees growing along and on the existing boundaries and within the subject property will not depreciate or detract from the character of the surrounding neighborhood. It appears the existing dwelling's location and water tank established in the late 1980s has not visually or physically adversely affected the rights of the adjacent property owners or surrounding properties. Therefore, it is felt the proposed building improvements within the affected side yard and respective minimum open space requirement will not detract from the character of the immediate neighborhood or the proposed subdivision.

The subject variance application was acknowledged by certified letter dated October 11, 2000. Pursuant to the recent site inspection and additional time to allow the Planning Director to understand and address agency and public comments received, the applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than January 31, 2001.

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 owner, 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 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 owner or owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance pertaining to the construction of the proposed building addition.

No ohana dwelling unit shall be permitted on the proposed lots.

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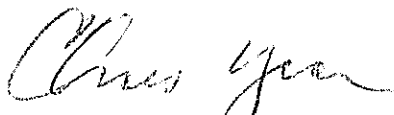
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3. The location the existing water tank and portions of an existing dwelling will not meet the minimum side yard and corresponding permitted projections into yards and open spaces as required by the Zoning Code. The applicant is allowed to maintain the existing building improvements pursuant to site plan dated February 21, 2000.
4. Future building improvements and permitted uses on the subject property 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,



CHRISTOPHER J. YUEN
Planning Director

WRY:cps

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xc: Real Property Tax Office

SUB 00-044

Mr. and Mrs. Theodore T. Takai, Jr.