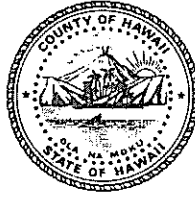


Stephen K. Yamashiro  
Mayor



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 095 324 919

January 25, 2000

Mr. Wilbur F. Schaner  
R.R. 3 BOX 2218  
Pahoa, HI 96778

Dear Mr. Schaner:

VARIANCE PERMIT NO. 1090 (VAR 99-106)  
Applicant: WILBUR F. SCHANER  
Owner: WILBUR F. SCHANER  
Request: Variance From Minimum Yards,  
Pursuant to Chapter 25, Zoning  
Ratified April 6, 1999  
Tax Map Key: 1-4-033:074, Lot 365

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. 1090 allows portions of an existing dwelling "AS BUILT" to remain on the subject property with a side yard of 3 feet and 0.01 feet open space from the affected side yard, in lieu of the minimum 8 feet and minimum open space of 4 feet, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 5, 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.

#### FINDINGS AND RECOMMENDATION

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

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JAN 25 2000

*Filed up 1/25/00*

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 8040 square feet is Lot 365 being a Portion of Nanawale Estates Subdivision, Unit III-B, F.P. 1045, Puua, Puna, Hawaii.
2. It appears that the existing dwelling and water tank building improvements were constructed under previous building permit(s) 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 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 October 28, 1999 by The Independent Hawaii Surveyors, identifies the existing dwelling and building encroachments located on the subject property and adjacent lot.
5. The written description submitted by the applicant with the variance application states in part:

"To obtain all required County variances found by the field survey made on November 1, 1999 on the accompanying map and report showing existing conditions upon Lot #365, Nanawale Estates Subdivision, Unit 111-B (sic), Puna, Hawaii. TMK (3) 1-4-33:74.

The home was built in 1970 and the encroachments have existed for 29 years with no problems. I bought it 9 ½ years ago unaware of the existing conditions until now. I will be 80 years old November 28, 1999 and I am in the process of selling the home which is in escrow at this time and the buyer was kind enough to agree to an extension of the closing date to allow me time to obtain the necessary variances.

My home is my entire savings of my life time. I am selling so I can go back to Idaho and be with my three children, grand-children and great-grand child to spend my remaining years with them. This delay may cost me from buying a nice mobile home in a nice quiet mobile park."

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6. The Department of Finance-Real Property Tax Office memorandum states in part:

"Property is receiving agricultural use value"  
"Taxes are paid through December 31, 1999."

7. The State Department of Health (DOH) memorandum dated December 23, 1999, in the subject variance file states:

"We have no objections to the proposed consolidation and resubdivision application. (sic) However, minimum setback requirements for existing wastewater system needs to be maintained. The existing systems need to be identified on the application map."

8. The Department of Public Works (DPW) memorandum dated December 27, 1999, in the subject variance file states in part:

"The minimum setbacks (for screen room) shall be maintained as follows:  
residential structures – 3 ft. side and 3 ft. rear; commercial structures – 5 ft. side and 5 ft. rear.

For the one-story wood framed residence, cut back the roof overhang approximately 6" from the property line at the southwest corner. The roof overhang shall have one-hour fire-resistive construction where the roof projects beyond the allowable projection into the setbacks per the Uniform Building Code (UBC)."

For the record, the applicant obtained a building permit (B No. 991598) on December 28, 1999 to address the above DPW comments and removed building encroachments to comply with minimum UBC requirements. B No. 991598 was closed by the DPW Building Division on January 4, 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. One objection to the variance was received on January 4, 2000 from a surrounding property owner(s).

The applicant submitted a site plan, which identifies the location of an existing dwelling and related building improvements. The site plan submitted identifies the distances between the dwelling and the affected side boundary line. Portions of the existing dwelling and roof eave were constructed within one of the property's two side yards.

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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 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 would be economically unreasonable and may disrupt other existing site improvements.

The current owner, on his own volition, is honestly trying to resolve existing building encroachment problems. No evidence has been found to show indifference or premeditation by the previous or 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 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 existing dwelling and other site improvements were constructed by a previous owner under a building permit nearly 30 years ago. Building inspections of the premises, during building construction and throughout the life of both building permits did not disclose any building setback irregularities. The current owner and applicant were not aware of any building encroachments until the closing of escrow.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within a side yard. 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 in the early 1970s have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding

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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 side yard were created and induced by an accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction by the previous owner. 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 December 20, 1999. Additional time to review the subject variance application by the participating agencies and a copy of a recent building permit was required.

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. The effective date of this permit is January 25, 2000.
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 dwelling 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 dwelling identified on the plot or site plan submitted with the variance application 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.

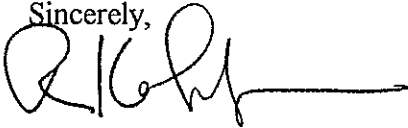
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



 VIRGINIA GOLDSTEIN  
Planning Director

WRY:gp

p:\WP60\WRY\FORMLETT\VARAPPSCHANER

c: Real Property Tax Office  
Title Guaranty Escrow Services  
Brian G. and Sylvia M. Phillips