

Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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CERTIFIED MAIL

7099 3220 0000 4869 8654

February 4, 2000

Mr. Raymond K. Elia
P. O. Box 641
Kurtistown, HI 96760

Dear Mr. Elia:

VARIANCE PERMIT NO. 1094 (VAR 99-103)
Applicant: RAYMOND K. ELIA
Owner: RAYMOND K. ELIA
Request: Variance From Minimum Yards,
Pursuant to Chapter 25, Zoning
Ratified April 6, 1999
Tax Map Key: 1-6-052:026, Lot 5298

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. 1094 allows portions of an existing dwelling "AS BUILT" to remain on the subject property with a minimum side yard of 4.78 feet and 19.24 feet from the affected side yard in lieu of the minimum 20 feet requirements, and a minimum 4.78 feet open space from the affected side yard in lieu of the 14 feet minimum open space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 5, 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 and open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 3.00 acres is Lot 5298, Ld. Ct. 1053, Hawaiian Acres, Keaau, Puna, Hawaii. The property's address is 16-1260 Koloamaoli Street (9th Street).
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 April 6, 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:

"I am requesting a variance for the open-air carport attached to the dwelling, for the back corner of the house and the water pump shed on the property (3) 1-6-5 52-26. The carport, the back corner of the dwelling and the water pump are encroaching into the side setback zone of the County Building code for the following reasons:

1. I had purchased the property in September of 1997 and was unaware of the existing setback violations; carport, back corner of the dwelling and the water pump shed..(sic)
2. The Independent Hawaii Surveyors report (included) shows the encroachments and the need for a variance.
3. Tearing down the carport would take away my only shelter for my vehicle and would incur a high cost to remove it especially since it was upgraded to "hurricane standards" by the previous owner. Building another carport at another location on the property along with land excavation cost would create a substantial financial hardship for me.

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Modifying the back corner of my home to meet the setback requirement would also incur another high cost and a financial hardship.

The water pump shed is small in size (2' x 3' x 2.5') however (sic) to meet setback requirement (sic) would require plumbing costs to realign pipes and connectors to the pump at another location. (Pursuant to the applicant and the record: The water pump shed structure's height is below six (6) feet)

4. Granting a variance would not affect the character of (sic) or have any adverse impact on the surrounding properties within the neighborhood for the carport is an open-air carport small in size (15' x 28' x 8'), most of the adjacent properties are vacant, the back corner of the home is not visible to the public, the pump shed is located behind the house and is small in size. I have met and had spoken to the affected property owner, Santiago Bailado, who have no objections since it is not affecting his property."
6. The Department of Finance-Real Property Tax Office memorandum dated December 23, 1999 states in part:

"There are no comments at this time"
"Taxes are paid through December 31, 1999."
7. The State Department of Health (DOH) memorandum dated December 23, 1999, states in part:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater needs to be maintained."
8. The Department of Public Works (DPW) memorandum dated December 27, 1999, in the subject variance file states in part:

"We have reviewed the subject application forwarded by your memo dated December 20, 1999 and have no comments or objections."
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.

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 20 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 copies of past building permit records were 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 31, 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,

A handwritten signature in black ink, appearing to read "V. Goldstein", with a long horizontal line extending to the right.

for VIRGINIA GOLDSTEIN
Planning Director

WRY:gp

p:\WP60\WRY\FORMLETT\VARAPPELIA

c: Real Property Tax Office