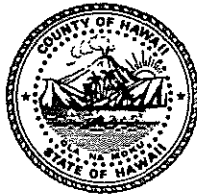


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

CERTIFIED MAIL

7099 3220 0000 4868 8259

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

August 22, 2000

Mr. Mark S. Bartholomy  
P.O. Box 441  
Hawi, Hawaii 96719

Dear Mr. Bartholomy:

Variance Application WH(VAR 00-46)

Variance No. 1146

Applicant: MARK S. BARTHOLOMY

Owner: MARK S. BARTHOLOMY

Request: Variance From Minimum Rear Yard and Rear Yard and Open Space Requirements

Tax Map Key: 5-5-011:008

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling with a 14.6 to 19.5 feet rear yard in lieu of the minimum 20 feet rear yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(A), and Ordinance 97-88.

The Planning Director denies your request to allow an existing shed with a 6.1 to 9.4 feet rear yard in lieu of the minimum 20 feet rear yard, and a 5.2 to 8.5 feet rear yard open space in lieu of the minimum 14 feet rear yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(A), and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

The subject property is located at Kahei House Lots, HTS Plat 507 and Grant 9207 to Fred C. Koelling, Lot 19-A, at Kakei, North Kohala, Hawaii, Tax Map Key: 5-5-011:008.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.92 acres of land area.
2. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 882221 opened on November 18, 1988 and closed on February 23, 1989 for a single family dwelling (House A).
  - b. Building Permit No. 882224 opened on November 18, 1988 and closed on February 23, 1989 for a single family dwelling (House B)
  - c. Building Permit No. 882223 opened on November 18, 1988 and closed on February 23, 1989 for a single family dwelling (House C).
  - d. Building Permit No. 882222 opened on November 18, 1988 and closed on February 23, 1989 for a single family dwelling (House D).
3. A survey map prepared by Wes Thomas Associates on May 23, 2000 shows the one story single family dwelling with a 14.6 to 19.5 feet rear yard in lieu of the minimum 20 feet rear yard. As such, the dwelling encroaches 6 inches to 5 feet 4-7/8 inches into the required 20 feet rear yard.
  4. The survey map shows the existing shed with a 6.1 to 9.4 feet rear yard in lieu of the minimum 20 feet rear yard. As such the shed encroaches 10 feet 7-1/4 inches to 13 feet 10-7/8 inches in the required 20 feet rear yard.
  5. The survey map shows the existing shed with a 5.2 to 8.5 feet rear yard open space in lieu of the minimum 14 feet rear yard open space. As such the shed encroaches 5 feet 6 inches to 8 feet 9-5/8 inches into the required 14 feet rear yard open space.
  6. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling. There is no record of a building permit for the existing shed. The Real Property Tax field records indicate existing dwellings, but there is no record of the existing shed.
  7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1988 when the dwelling was constructed. There also appears to have been a siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
  8. It has been over 12 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.

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9. The variance application was filed with the Planning Department on June 6, 2000

There were no letters of objection from any adjacent or surrounding property owners.

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or 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

10. The owner on his own volition is honestly trying to resolve this long standing problem which was not created by him. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.
11. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships for the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable solutions available without excessive demands being placed on the owner when a more reasonable alternative is available by the granting of this variance application.

#### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. As such, the dwelling encroaches 6 inches to 5 feet 4-7/8 inches into the required 20 feet rear yard. These encroachments will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while Zoning Code requires a minimum 20 feet rear yard in this particular case, the encroachments will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling complies with the minimum yard requirements of the Zoning Code.

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, this variance will not be materially

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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 to allow the existing one story single family dwelling with a 14.6 to 19.5 feet rear yard in lieu of the minimum 20 feet rear yard is approved and subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with all stated conditions of approval.
2. This variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. All other applicable State and County rules and regulations shall be complied with.

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

#### DENIAL OF PROPOSED SETBACKS FOR THE EXISTING SHED

12. The survey map shows the existing shed with a 6.1 to 9.4 feet rear yard in lieu of the minimum 20 feet rear yard. As such the shed encroaches 10 feet 7-1/4 inches to 13 feet 10-7/8 inches in the required 20 feet rear yard.
13. The survey map shows the existing shed with a 5.2 to 8.5 feet rear yard open space in lieu of the minimum 14 feet rear yard open space. As such the shed encroaches 5 feet 6 inches to 8 feet 9-5/8 inches into the required 14 feet rear yard open space.
14. The Department of Public Works, Building Division shows no record of a building permit for the existing shed. The Real Property Tax field records indicate existing dwellings was assessed taxes since 1944. However, there is not record of the existing shed.
15. The applicant states in his application that the shed is said to be over 80 years old.
16. Chapter 25, Article 1, Section 25-1-5 states: "A non-conforming building or parcel means a building or parcel lawfully in existence on September 21, 1966 or on the date of any

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amendment to this chapter, but which does not comply with the regulations for the zoning district in which it is located."

In this instance, the shed located on the rear of the property cannot be considered a non-conforming lawful building because there are no records that indicate that the shed was constructed with the proper permits.

Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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xc: West Hawaii Office