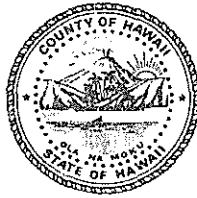


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

October 15, 2001

Mr. and Mrs. Michael Nelson
P. O. Box 775
Volcano, HI 96785

Dear Mr. and Mrs. Nelson:

VARIANCE PERMIT NO. 1231 (VAR 01-051)

Applicants: MICHAEL E. NELSON, ET AL.

Owners: MICHAEL E. NELSON, ET AL.

**Request: Variance from Minimum Yards
Pursuant to Chapter 25, the Zoning Code**

Tax Map Key: 9-9-003:013, Lot 48

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1231 allows portions of the carport being constructed to be enclosed and remain with a minimum 18 feet rear yard in lieu of the minimum 20 feet rear yard required and permits the location and construction of a water catchment tank to be located a minimum 5 feet from the rear boundary line in lieu of the required minimum 20 feet rear yard and 14 feet rear yard open space requirements. The variance is from the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a) (2) (A) and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, containing 12,698 square feet, is Lot 48, and is situated within the Volcano Golf and Country Club Subdivision, Unit I, File Plan 1036, Land Commission Award 7713, Apana 11, and is situated within Keauhou, Kau, Hawaii. The subject property is commonly referred or described using its tax map key (TMK) number: "TMK: (3) 9-9-003:013, Lot 48". The subject TMK property is zoned Single-Family Residential (RS-15) by the County of Hawaii and designated Urban "U" by the State Land Use Commission.

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2. **Application.** The applicants submitted the variance application form, revised site plan, supplemental information, tax clearance, and \$250.00 filing fee check on June 20, 2001.
3. **Site Plan.** The applicant's map or revised site plan drawing, drawn to scale, was submitted with the variance application and is dated "6-15-01". This site plan denotes and identifies the location of the proposed garage encroachments and water catchment tank within the property's rear yard. The site plan identifies the building envelope prescribed by the Hawaii County Zoning Code.

The applicant's site plan, dated June 15, 2001, denotes and identifies the location of the existing structures being constructed and other planned building and site improvements.

The presence and location of an existing cesspool was denoted on the variance application's site plan submittal dated June 15, 2001.

4. **Building Permit(s).** County permit records indicate that DPW-Building Division's building (010152 and 010888), electrical (E010508), and plumbing (M010517) permits were issued to construct a dwelling, water tank, and detached carport and are currently open.
5. **Agency Comments and Requirements.**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated June 20, 2001 states in part the following:

"TMK(s): (3) 9-9-003-013-0000"

"This is to certify that ***MICHAEL E. NELSON and CHERYL I. NELSON*** (Owners-of-record) has paid all real property taxes due the County of Hawaii up to and including June 30, 2001."

The memorandum from the Department of Finance-Real Property Tax dated June 28, 2001 states in part:

"Remarks: There are no real property tax consequences by granting variance."

"Current Real Property taxes are paid through June 30, 2001."

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- b. The State Department of Health (DOH) memorandum dated July 5, 2001, in the subject variance file states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- c. The Department of Public Works (DPW) memorandum dated July 6, 2001, states in part:

"We have reviewed the subject application and offer the following comment.

Please refer to the attached Building Division comments dated July 2, 2001."

The attached DPW memorandum dated July 2, 2001 states in part:

"We opposed the approval of the application for the reasons noted below:

"Permits 010152, E010508 & M010517 for the subject property were never finalized."

"Others: Record shows no building permit for water tank or proposed garage."

(Regarding DPW-Building Division comments and permit requirements, 2001 please refer to VARIANCE DECISION-VARIANCE CONDITIONS cited below.)

6. **Notice to Surrounding Owners.** The applicant submitted proof of mailing or good faith efforts to serve notice(s) of the variance application to the designated surrounding property owners and lessees on the applicant's list. The applicant submitted proof of first and second mailing with their letter dated June 14, 2001. Due to unusual family circumstances, the first and second notice(s) was mailed together on July 10, 2001. The applicant's letter, attachments, and proof of mailing was received on July 11, 2001.

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7. **Comments from Surrounding Property Owners or Public.**

A letter from Mr. George E. Gross endorsing the applicant's request and variance application was received on July 13, 2001 and incorporated into the subject file.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The dwelling, water tank, and carport are being constructed under 2-building permits (BP010152 and BP010888) together with other related electrical and plumbing permits issued by the DPW-Building Division.

The applicants discovered that the original tank dimensions and other tank specifications were misunderstood by the draftsman and incorrectly drawn on the approved site plan submitted with the building permit application. The increased tank diameter and present tank foundation location does not comply with the Zoning Code's minimum yard and open space requirements. Furthermore, the applicant's discovered that reducing the water tank would result in a smaller storage capacity and redesigning the water tank to fit the within the building envelope would change water pressure within the dwelling. The revised water tank location is necessary to take advantage of the property's existing topography.

The enclosed garage will remove any anxiety of having an open and unprotected carport. The applicant submitted a recent map/site plan, which identifies the carport's existing location and proposed "garage" encroachments.

The variance site plan denotes and identifies distances between the proposed water catchment tank and the enclosed garage from the affected rear boundary line. Portion of the proposed water catchment tank will be 10.0 feet into the affected minimum 20 feet rear yard. Portions of the garage will be 2.0 feet into the minimum 20 feet rear yard. The subject TMK property's rear yard and boundary line abut a common area or "open community lot" within the subdivision.

Therefore, considering the applicant's submittals, findings, and circumstances, it is felt there are special or unusual circumstances applying to the subject property, which exist either to a degree which deprives the applicants of substantial property rights that would otherwise be available, or to a degree, which obviously interferes with the current and best use of the subject property.

ALTERNATIVES

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the applicant and current owner(s) to address and

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correct the existing building encroachments include the following actions:

1. Attach the water tank and carport or garage to the dwelling being constructed.
2. Relocate the dwelling, water tank, and carport or garage to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

The partial removal or relocation of the dwelling and carport improvements being constructed may disrupt and change the dwelling's shape or building geometry, building relationship, and the property's existing topography and character.

The subject TMK property and surrounding property are not serviced by a public water system. The existing subdivision and the applicants are dependent on rainfall and are required to install a private water catchment system to store and provide potable water for the dwelling being constructed. Existing property grade is utilized or topography was previously manipulated to install the individual water catchment tank and system. Proper placement of the water tank to create water pressure is limited by subject property's "pie" shape and exposure to other weather and site constraints. The property's "pie" shape and building envelope limitations and other privacy issues, etc. were discovered after commencement of laying the building foundations pursuant to approved site plans and building permits issued.

No evidence has been found to show indifference or premeditation by the applicants to deliberately build or intentionally allow the building encroachment problems or issues to occur. The applicants/owners submitted the variance application to address the carport or garage encroachment issues and the water catchment tank's location within the property's rear yard.

The Planning Department acknowledges there may be other design or building alternatives available to the applicants or current owners beyond those cited above.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s) and boundary/property lines. The existing dwelling and carport are being constructed under 2-building permits issued to the applicants or current owner(s). The building encroachment issues were discovered after both building permits were issued to develop the property. The 2-building permits issued by the DPW-Building Division to construct the dwelling and detached carport are still open and have not been closed by the DPW-Building Division together with other associated electrical and mechanical permits issued. The applicant or current owners are trying to address the water tank and carport or garage encroachment issues within the rear yard after further study

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of the property's shape and topography was discovered and found limiting. A revised site plan map of the TMK property showing the tank location and proposed building changes and other property improvements was submitted with the applicant's variance request. The tank's location and other building or design issues will be addressed between the applicant and the DPW-Building Division.

It appears that the commencement of recent building activity and the proposed building encroachments within the property's rear yard in 2001 will not be perceptible and visually obtrusive from adjacent TMK property(s), common open space "community" property, and the rights-of-way. It appears the carport or garage encroachments and water tank location will not depreciate or change the character of the surrounding neighborhood and the existing and surrounding land patterns. It appears the existing encroachment(s) within the affected rear yard was a misinterpretation of the minimum building yards or boundary line(s) during planning of the building improvements. Therefore, it is felt that the existing and proposed building encroachments or building improvements within the rear yard and affected rear yard open space will not detract from the character of the immediate neighborhood or other surrounding property within the subdivision.

The subject variance application and submittals were acknowledged by certified letter dated June 6, 2001. Additional time by the applicants was requested by the applicant's to understand variance procedures and other study the building permit issued and other building requirements.

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.

VARIANCE DECISION-VARIANCE CONDITIONS

The variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), 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.

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3. Portions of the water tank and garage being constructed within the subject TMK property's rear yard are permitted to remain according to the applicant's revised site plan dated June 15, 2001.

The applicant(s) or owner(s) shall address or amend existing building permits or secure any further building permit required by the DPW-Building Division. The location of the dwelling, water catchment tank, and detached garage shall be located and installed in accordance with the approved site plan dated June 15, 2001.

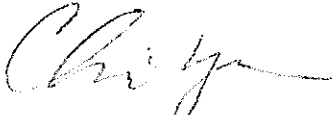
All active building permits and associated construction permits issued by the DPW-Building Division to the subject TMK property to permit the dwelling, water tank, and detached garage shall be closed or "finaled" prior to sale or transfer of title of the subject TMK property.

Future building improvements, building additions, and permitted uses on the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

4. No ohana permit shall be granted to allow an ohana dwelling on the subject TMK property and no building permit(s) shall be issued to allow an ohana dwelling unit or second dwelling unit to be constructed or established on the subject TMK property.

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

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xc: Real Property Tax Office
DPW-Bldg. Div. (BP 010152/BP010888)