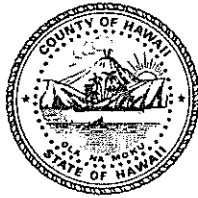


Harry Kim
Mayor



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

November 7, 2002

Gilbert M. Halpern, Esq.
Attorney at Law
465 Haili Street
Hilo, Hawaii 96720

Dear Mr. Halpern:

SUBJECT: VARIANCE PERMIT NO. 1329 (VAR 02-048)
Applicant: GILBERT M. HALPERN, ESQ.
Owners: CASTLE ROCK TITLE AGENCY, INC./
FERRIS M. SAYDAH, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 1-4-073:041, Lot B

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request on behalf of the interim owner(s) or current owner(s) subject to conditions. Variance Permit No.1329 allows portions of a dwelling identified on the variance site plan map dated March 13, 2002 to remain with a minimum 15 feet side yard and attendant 10 feet side yard open space requirements according to the current owner's (Ferris M. Saydah, Et al.) contractor (Michael O'Friel). The variance request is from Lot B's (Flaglot) minimum 20 feet side yards and attendant 14 feet side yard open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Sectopm 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property (Flaglot), Lot "B" containing 1.013 acres, is within Vacationland Hawaii, Unit II, File Plan 920, and Lot 82-A, being portions

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of R.P. 4497, L.P. 8177, L.C. Aw. 8559, Apana 5 to C. Kanaina, and situated at Kapoho, Puna, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about July 12, 2002. The variance application site plan or survey map drawing is drawn to scale and dated March 13, 2002. The survey map by The Independent Hawaii Surveyors denotes the dwelling (house) position, roof eave location, and other site improvements, "AS BUILT", on "LOT B", pursuant to an actual field survey performed on March 13, 2002.

Note: The variance request does not address the location of cesspool or individual wastewater system (IWS), the access and driveway improvements, and location of other site improvements within the Lot B's pole. The "shed", gate within the pole of Lot B, and other boundary encroachments straddling common boundary lines into adjoining property(s) must be addressed and resolved by the applicant or between affected parties or between legal property owner(s).

Pursuant to copy of recorded warranty deed (Document No(s): 2002-153818) received on October 25, 2002, it appears that on or about August 30, 2002, Castle Rock Rock Title Agency, Inc. transferred ownership to Ferris M. Saydah Et al.

Further, according to the current owner's contractor (Michael O'Friel) and other plan submittals, the dwelling's current position and variance request should be clarified or modified to specify and allow a minimum 15 feet side yard and attendant 10 feet side yard open space requirements for the existing dwelling and proposed modifications. Portions of "unpermitted" dwelling improvements or encroachments (shed roof) and other "unpermitted" building improvements, i.e. "POOL", "WOOD DECK" and "SHED" within the pole of the subject property "LOT B" identified on the original variance site plan map dated March 13, 2002 will be demolished and removed by the current owner(s) or pursuant to the owner's contractor (Michael O'Friel).

3. **Agency Comments and Requirements-(VAR 02-048):**

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- a. The State Department of Health (DOH) memorandum dated August 1, 2002, states:

“We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained.”

- b. The Department of Public Works (DPW) memorandum dated August 23, 2002 states in part:

"We have reviewed the subject application forwarded by your memo dated July 24, 2002 and oppose the approval of the application for the reasons noted below.

Building permit number 840637, electrical permit number EH63988, and plumbing permit number MH39056 for the subject dwelling have no status of inspection.

There is only one building permit for a 1-bedroom, 1-bath dwelling. There are no other permits for the other structures.”

4. **Notice to Surrounding Property Owners.** Affidavits or proof of mailing a first and second notice were submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on July 12, 2002 and July 30, 2002, respectfully, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject property. The applicant, on behalf of the “interim” or current owners, is trying to resolve building encroachment issues. The variance site plan map was prepared by a surveyor and shows the dwelling position and other building positions, “AS BUILT”, on Lot B. This site plan shows that portions of the dwelling were constructed beyond the lot’s building lines or building envelope into Lot B’s side yards and attendant side yard open space requirements, pursuant to the

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Hawaii County Zoning Code. The applicant or owner(s) became aware of the encroachment and building permit issues after the survey map was prepared.

No evidence has been found to show indifference or premeditation by the applicant or current owners to deliberately create or intentionally allow the building encroachment problems to occur. It appears that some of the building improvements are being constructed under valid building permits and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the original dwelling and other building improvements on the property did not disclose any previous building encroachment issues or building setback irregularities.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

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)/uses and boundary/property lines.

It appears that some of the building encroachments into the affected side yards are not physically noticeable or visually obtrusive from right-of-way and adjoining property(s). It appears that the existing building encroachments have not affected the adjoining property(s) or neighborhood or severely changed or altered the surrounding land patterns. Therefore, it is felt that some of the building encroachments within the minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated July 24, 2002 and additional time to consider agency comments and other building permit issues was necessary. The Gilbert

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applicant, interim owner, and current owner(s)-contractor, agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than November 15, 2002.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This 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.
3. Portions of the dwelling or building improvements will not meet Chapter 25, the Zoning Code's minimum side yard and side yard open space requirements. The approval of this variance allows the portions of the dwelling improvements or dwelling encroachments identified on the variance application's site plan map dated March 13, 2002, to remain, "AS BUILT", and become subject to a minimum 15 feet side yards and attendant 10 feet side yard open space requirements from the affected side boundary lines pursuant to the current owner and the site plan map maintained in the subject variance file.
4. The applicant or current owner(s) shall confer with the DPW-Building Division and address the outstanding building permit issues. The following active building permits: Building Permit -840637, Electrical Permit-EH63988, and Mechanical Permit-MH39056 shall be "finalized" or closed by the DPW prior to any change in title or sale of the subject TMK property.

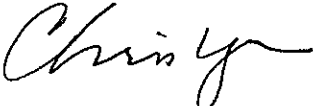
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Any future detailed building plans and permits shall be revised to be consistent with the variance site plan map and reflect the correct owner(s) names.

5. Any further building or construction permits issued to the current owner(s) of the subject TMK property or "LOT B" shall be "finaled" or closed by the DPW prior to any change in title or sale of the subject TMK property.
6. Future building improvements and permitted uses 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

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xc: Real Property Tax Office
Planning Dept. – Kona
Michael O’Friel-Contractor
(Inc. Building Plans/B.P.App.)