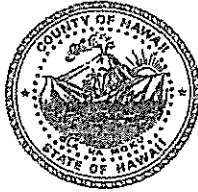


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

April 30, 2004

Mr. John P. Dinmore-Architect
75-167 Kalani Street
Kailua-Kona, HI 96740

Dear Mr. Dinmore:

VARIANCE PERMIT NO. 1439 WH (VAR 04-011)
Applicant: JOHN P. DINMORE-ARCHITECT
Owner: JOHN D. IRISH
Request: Proposed Replacement Dwelling:
Variance from Minimum Yards,
Chapter 25, Zoning
Tax Map Key: 7-8-019:005, Lot B

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1439 allows portions of a garage to be rebuilt on subject TMK property with a minimum 6.5 feet side yard and attendant minimum 1.5 feet side yard open space, according to the applicant's variance site plan map. The variance is from property's minimum 10.00 feet side yard and corresponding minimum 5.00 feet side yard open space requirement, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a) (1) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot B containing 35,959 square feet, is within Puuloa I Subdivision, portion of Keauhou, North Kona, Hawaii.

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The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant/owner submitted the variance request to the Planning Department on or about January 12, 2004. Subsequent to a determination by the Planning Director, the variance application was acknowledged by letter dated February 23, 2004. The application includes background letter and site plan and other drawings, drawn to scale, denoting the location of the dwelling and garage. The applicant is requesting a variance to allow the garage improvements to be constructed on the subject TMK with a minimum 6.5 feet side yard and minimum 1.5 feet side yard open space from the affected side boundary line.

The applicant's background, states in part:

"The existing residence on the property has corner of the garage 5" over the property line with the roof overhang encroaching into the adjoining lot by 4'-5". A portion of the existing residence also encroaches into the side yard setback.

We are proposing removing the existing structure and replacing it with a new residence with the corner of the attached new garage located 6.66' feet from the property line (in lieu of the 20' foot setback) and a clear space for the roof overhang of 1.66' (in lieu of 3' feet as required by the Housing Code).

The cost of fill and retaining walls if the house was moved to comply with the side yard setback would be too expensive. In addition there are two mature trees at the bottom of the proposed fill which we would like to save."

Note: Colored pictures of the building site were included for reference.

4. **Agency Comments and Requirements-WH (VAR 04-011)**:
 - a. The Department of Public Works (DPW) memorandum dated March 9, 2004, states in part:

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“BUILDING

1. Building shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).”

The attached Memorandum dated March 4, 2004 states in part:

“We oppose the approval of the application for the reasons noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear

The projections do not meet setback requirements and should be corrected.

The exterior wall or projections shall be constructed to provide one-hour resistive occupancy separation.

Others: The electrical permit # EK04071 is not finalized.”

- b. The State Department of Health (DOH) memorandum dated March 17, 2004, states:

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

5. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice(s) to surrounding property owners were received by the Planning Department. According to submittals, the first notice was mailed on January 27, 2004 and second notice was mailed on March 3, 2004.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections to the variance application from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject TMK property's geometry, topography, and "lay of the land" within the building envelope limit building options. According to the applicant, extensive fill to produce a building pad would be required and entail removal attractive landscaping within the building envelope. The proposed construction eliminates portions of an old building straddling a common side boundary line and other encroachment issues. Portions of the proposed replacement garage will be built with a minimum 6.5 feet side yard and attendant minimum 1.5 side yard open space measured from the affected common side boundary line.

ALTERNATIVES

Alternatives available to the applicant include the following actions:

1. Locate the proposed dwelling and garage building within the property's building envelope prescribed by the Zoning Code.
2. Consolidation of the subject property (Lot 8) with adjoining property (Lot 9) and resubdivision the consolidated property to adjust a common boundary line to meet minimum building yard(s).

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.

Portions of the original dwelling's garage straddles a common boundary shared between subject TMK property (Lot 8) and adjoining property (Lot 9). The current encroachment issues are not immediately noticeable or visually obtrusive from the public right-of-way. The proposed garage position eliminates the encroachment issues within the adjoining property (Lot 9) and location of the replacement garage, albeit within the minimum side yard and side yard open space area, would not detract from the character of the subdivision, surrounding neighborhood, and surrounding land patterns.

Therefore, due to the character of the property or "lay of the land", the limited building or usable "natural" area to site the "new structure" (dwelling and garage), and other site limitations, it is felt that the variance request is reasonable. The proposed building improvements within the

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affected side yard and side yard open space will not detract from the character of the subdivision or immediate neighborhood.

The subject variance application was acknowledged by letter dated February 23, 2004. Additional time to consider property's geometry- topography and request was deemed necessary. The applicant agreed to extend the date to April 30, 2004 to complete the variance background and render a decision on the subject variance.

Based on the foregoing findings, this applicant's 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, 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. The approval of the variance is from the Zoning Code's minimum side yard and attendant side yard open space requirements from affected side boundary line. The approval of this variance allows the proposed building improvements or "Proposed Dwelling" and "Garage" denoted on the variance application's site plan map to be constructed on subject TMK property.
4. The applicants/owner(s) or assigns shall comply with all County rules and regulations and State statutes pertaining to the construction of the dwelling, detached garage, and related site improvements.

Mr. John P. Dinmore-Architect

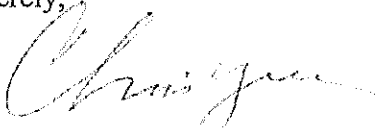
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5. Future building improvements and permitted uses on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

WRY:pak

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cc: Real Property Tax - Kona
Planning Department – Kona