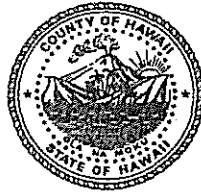


Harry Kim
Mayor



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

November 5, 2004

Mr. Ron Dolan
16 A Railroad Avenue
Hilo, HI 96720

Dear Mr. Dolan:

VARIANCE PERMIT NO. 1486 (VAR 04-042)

Applicant: RON DOLAN

Owners: MATHEW RIPPA, ET AL.

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

Tax Map Key: 1-3-012:004, Lot 46

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 1486 allows the dwelling "HOUSE" encroachments on subject TMK property (Lot 46), to remain, "AS-BUILT", with a minimum 16.98 feet side yard in lieu of the minimum 20.0 feet side yard according to the variance site plan map dated October 9, 2003. The variance request is from subject TMK's minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location**. The subject property, Lot 46 containing 1.000 acre, is within Block 6 of Leilani Estates Subdivision, and situated at Keahialaka, Puna, Hawaii.
2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about March 11, 2004. The variance application's site plan map, dated October 9, 2003, was prepared by

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[Signature]
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Mr. Ron Dolan
Page 2
November 5, 2004

The Independent Hawaii Surveyors and drawn to scale. The map denotes the location of the dwelling and 2-water tanks, "AS-BUILT", into the property's minimum side yards and side yard open yard or clear space requirements stipulated by the current Zoning Code (1996, Ord. No. 96-160; ratified April 6, 1006).

The applicant's background states in part:

"It appears from the site inspection and discussions with the contractor by the undersigned that the contractor committed an honest staking mistake; no malice and intent could be substantiated during the inspection. Neither the owners nor the contractor would have benefited as a result of the violation.

The violation of the setback is rather small. The setback violation is 3.32 ft., however, is limited to the southeast side of the dwelling. Note the water tanks were in the set back have been moved toward the back of the property w/in (sic) the building envelope pursuant to survey map dated October 9, 2003."

3. **Agency Comments and Requirements-(VAR 04-042):**

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

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

- b. The Department of Public Works (DPW) memorandum, dated April 28, 2004, states:

"We have reviewed the subject application forwarded by your memo dated April 13, 2004 and oppose the approval of the application for the reason noted below.

Building permit #931829 for the subject dwelling did not receive final inspection.

Please refer questions regarding the building permit to the Building Division at 961-8331."

Mr. Ron Dolan
Page 3
November 5, 2004

4. **Notice to Surrounding Property Owners.** The applicant submitted letter (fax) dated July 25, 2004 and September 16, 2004. According to the applicant's letters dated September 16, 2004/submittals and September 22, 2004, it appears that first and second notice(s) were mailed on March 11, 2004 and June 5, 2004, respectively.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from the surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The current owners, Rippa, Et al., purchased subject TMK property and building improvements on or about November 18, 2003 after a survey and survey map of the property, dated October 9, 2003, was completed for escrow purposes. The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, detached water tanks, and other site improvements, "AS BUILT" on "LOT 46". The site plan map shows the dwelling and 2-detached water tanks are within the property's minimum 20 feet side and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. According to a November 5, 2004 telephone conversation between Ron Dolan and Daryn Arai of this office, Mr. Dolan verbally confirmed that the two water tanks have been relocated outside of the 20-foot wide side yard setback and that these two water tanks are not situated within any of the other required yard setbacks applicable to the subject property.

The applicant, on behalf of Rippa, Et al., became aware of the building encroachment issues during escrow to sell the property. No evidence was found showing indifference or premeditation by the applicant or previous builders or owner(s) to deliberately create or intentionally allow the dwelling and both water tanks to be built within the minimum yards and attendant minimum open yard space requirements of the Zoning Code. It appears that the dwelling, water tanks, and other site improvements were built under valid building permit(s) and other construction permits issued by the County; and, inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

Alternatives available to the applicant or current owner(s) to address and correct the existing building encroachments include the following actions:

Mr. Ron Dolan
Page 4
November 5, 2004

1. Remove the dwelling encroachments or relocate the dwelling to fit within the correct building envelope prescribed by the Zoning Code. According to the applicant the water tank improvements within the affected side yard were removed or relocated within the property and comply with the minimum yards stipulated by the Zoning Code.
2. Consolidation of Lot 46 with adjoining Lot 45 and resubdivision of the resulting consolidated property to modify property lines and adjust minimum yards for the dwelling.

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 the dwelling encroachments constructed into affected side yard are not physically or visually obtrusive from adjoining property (Lot 45) or right-of-way. The portion of the dwelling within the side yard was built before the survey map was completed and presented during escrow to sell the property. It appears the 11 + year old dwelling encroachments within the affected side yard were caused by mistakes by the previous owner(s) or builders in the early 1990s. The dwelling and water tank encroachment issues were not detected until a modern survey was completed during 2003 and presented during escrow. It is felt that these 11 + year old building encroachments within the respective yards and open space requirements have not affected or altered the character of the subdivision and surrounding land patterns. Therefore, it is felt that the dwelling encroachments within the affected yards will not detract from the character of the immediate neighborhood or subdivision.

The subject variance application was acknowledged by letter dated April 13, 2004. Additional time for the applicant to submit proof of mailing the required first and second notice(s) was necessary. The applicant requested an extension to November 15, 2004, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

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.

Mr. Ron Dolan
Page 5
November 5, 2004

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

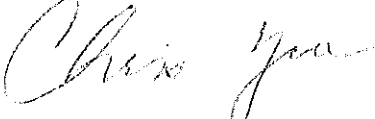
This variance request is approved subject to the following conditions:

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. Portions of a dwelling on the subject TMK property or Lot 46 will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum open space requirements according to the variance site plan map. The approval of this variance allows dwelling encroachments and building positions identified on the variance site plan map dated October 9, 2003 to remain, "AS BUILT", on the subject TMK property (LOT 46).
4. The outstanding Building Permit BP No. 931829 issued to the subject TMK property (Lot 46) shall be closed or "finaled" by the DPW-Building Division prior to any change in title or sale of the property.
5. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 46), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
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.

Mr. Ron Dolan
Page 6
November 5, 2004

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

WRYpak
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cc: Real Property Tax Office - Hilo
Planning Dept. - Kona