

CERTIFIED MAIL

August 10, 1993

Mr. and Mrs. Daniel Banks
1676 Wailuku Drive
Hilo, HI 96720

Dear Mr. and Mrs. Banks:

Variance Application (V 93-20)
Petitioner: Daniel and Martha Banks
VARIANCE FROM MINIMUM 20 FEET REAR YARD SETBACK,
14 FEET REAR CLEARSPACE AND 10 FEET SIDE YARD SETBACK
REQUIREMENTS
TAX MAP KEY: 2-3-29:56

FINDINGS AND RECOMMENDATION

After reviewing your variance application and the information submitted in behalf of it, the Planning Director hereby certifies the approval of a variance request to allow an existing single family dwelling with a rear yard of 12.5 feet in lieu of the minimum 20 foot rear yard setback, rear clearspace of 7.05 feet in lieu of the minimum 14 foot clearspace, and side yard setback of 6.9 feet in lieu of the minimum 10 foot side yard setback as required in Chapter 25 (Zoning Code), Article 4 (RS, Single Family Residential Districts), Section 25-124 (a)(2)(A)(B) (Minimum yards) and Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 10. Supplementary Yard and Open Space Regulations, Section 25-66(a)(1) (Projections into required yards and open spaces).

The subject property is on the north side of upper Wailuku Drive (Piihonua), 1000 feet east (makai) of its intersection with Peepee Falls Drive, Piihonua Houselots 2nd Series, South Hilo, Hawaii, TMK: 2-3-29:56. The subject 20,012 square foot parcel is zoned Residential (RS-15) by the County and designed Agriculture by the State Land Use Commission.

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The configuration of the subject property is rectangular in shape with a slight grade from the street to the lower level of the property where the existing dwelling is constructed.

The Planning Director has concluded that the variance request from the minimum rear yard, minimum rear clearspace and minimum side yard setback requirement(s) should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum setback requirements for the existing single family dwelling.

The letter dated June 2, 1992 [sic] from Mr. and Mrs. Banks states:

"We have applied for re-financing of subject property and presently have a loan pending with the underwriters representing [sic] Bank of America [sic] making time of the essence.

The appraiser noted that the rear and the east side of the building extends into the set-back. Please refer to the survey map of Blaine W. Ito (attached) for the subject property.

On the rear set-back, the roof line is 7.20' from the property line on the rear northwest corner and 7.05' from the property line on the rear northeast corner.

On the east-side set-back, the roof line is 9.3' from the property line on the north-east rear corner (which opposes our neighbors shed) and on the east side setback labeled 'Workshop and Green House' the roof line is 5.65' at the workshop northeast corner and 5.75' at the Green House southeast corner from the property line.

Bank of America has stated that refinancing of our home is now contingent upon obtaining county variance of the set-back limitations.

When we purchased the property through a 'Probate Sale' in November, 1991, neither the court's appointed appraiser nor the appraiser for the bank loan we received on the subject property raised the issue of 'set-backs.'

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There were seven permits granted within seven years to one owner named Barba Beven. Since that time, we are the third owner of the subject property.

We believe the building permits in question to the existing violations are: 54579 dated 12/21/72 and 761284 dated 6/14/76 for the rear set-back issue. We are not sure which permits may apply to the 'Workshop and Green House'.

Moving the rear or side walls and roof lines of the subject structures are not reasonable alternatives due to the cost factors involved. This would be an extraordinary expense beyond our current finances to remove and remodel."

Pursuant to an extract from the Real Property Tax Office, it appears the original dwelling was constructed in 1951 prior to the adoption of the Zoning Code in 1967. The location and construction of the original dwelling's footprint complies with the 1951 County code requirement(s). The original dwelling was built pursuant to Building Permit No. 10908 and it appears ten (10) additional building permits were issued between 1953 and 1977 by the Department of Public Works, Building Division. The location of the existing dwelling is a circumstance which existed before the present owners purchased the property in November, 1991.

Therefore, in considering the foregoing facts, it is 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

There are no reasonable alternatives in resolving the difficulty of the applicants. Alternatives available to the applicants include removing the building encroachment and rebuilding within the buildable area prescribed by the Zoning Code. The resiting or remodeling of the proposed improvements is economically unreasonable and would disrupt the design, function and architecture of the existing building improvement.

Based on the above cited considerations, the removal, resiting and/or redesigning of the existing improvements without design changes to the architecture and appearance of the existing dwelling improvements would be undesirable. Therefore while there may be

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alternatives available to the applicants, they are deemed to be unreasonable and would place excessive demands on the petitioner 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. The existing dwelling on the subject property met with and complied with all setback requirements when it was originally constructed. The encroachment constructed with building permits issued to previous owners is architecturally compatible with the existing dwelling line. The most directly affected property is the property to the east (parcel 57). No objection from the owner(s) of parcel 57 and the surrounding property owners were received by the Planning Department. As such, it appears the building encroachment into the rear and side yard setback(s) will not visually, physically or adversely affect the rights of the property owners of parcel 57. In addition, deck, workshop, and carport attached to the family dwelling structure is not used as a habitable area and will not affect or detract from the Single Family Residential character of the neighborhood. There were also no objections from any surrounding property owners or comments received from the Department of Public Works, Building Division to the proposed variance request.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

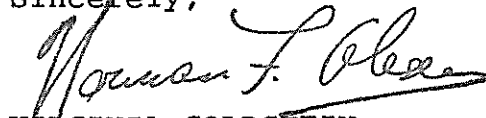
This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval;
2. The approval of this variance is only from the Zoning Code; and,
3. Future building improvement shall be subject to State and County regulations pertaining to occupancy and building construction.

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

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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