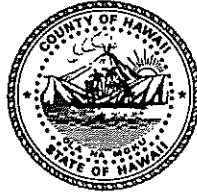


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL

March 15, 1995

Ms. Gina Bagarina^o
P.O. Box 1105
Kamuela, Hawaii 96743

Dear Ms. Bagarina^o:

Variance Application (VAR94-69)
Variance No. 634
Applicant: Gina Bagarino
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 6-4-010: 076

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of variance request No. 634 to allow an existing enclosed garage with a 6 foot side yard setback and 3 foot open clearspace yard setback in lieu of the minimum 8 FOOT SIDE YARD SETBACK and 4 FOOT OPEN CLEARSPACE YARD SETBACK as required by Chapter 25 (Zoning Code), Article 8 (Agriculture), SECTION 25-157 (Other regulations) and Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations), SECTION 25-66 (a)(Projections into required yards and open spaces).

The subject property is located on the east side of Noekolo Street approximately 580 feet north of the Pohina Street/Noekolo Street in the Kamuela Meadows Subdivision, South Kohala, Hawaii identified as Tax Map Key: 6-4-010: 076.

The Planning Director has concluded that the variance request from the minimum side yard setback requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kamuela Meadows Subdivision consisting of 9,750 square feet of land area.
2. The subject 2-car garage was issued Building Permit No. 900093 on January 23, 1990 and closed on August 29, 1990.

MAR 17 1995

3. A survey map prepared on September 6, 1994 by Wes Thomas & Associates shows the existing 2-car garage with an 6.0 foot side yard setback. As such, the subject dwelling encroaches into the south side yard setback by 2 feet with an open clearspace yard of 3.0 feet.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1990.
6. It appears that a construction staking error occurred in 1990 when the dwelling was constructed in the siting of the structure on the property. It also appears that a very minor siting error was done at the time of construction with the minuscule encroachments. No other evidence has been found to show otherwise.
7. It has been over 5 years since the construction of the existing garage was approved by the County and the petitioner is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.
8. The variance application was filed with the Planning Department on November 3, 1994.

Therefore, 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

1. The subject property is an interior lot and rectangular in shape.
2. The present 2 foot side yard setback for the garage and 1 foot roof overhang encroachment into the side yard setback is minor in relationship to the minimum required 8 and 4 foot side yard setback requirements. This minor

encroachment is not as perceptibly visible that it could be readily detected or seen as an encroachment into the side yard, mainly in part because it is not a habitable space.

3. The applicant on their own volition are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
4. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

1. The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The 2 foot side yard setback and 1 foot roof overhang encroachments into the side yard setback still provide for these functions. The rest of the dwelling complies with all setback requirements. This encroachment is also only for the 2-car garage portion of the development of the property. This encroachment into the side yard setback is so minor in scope and is not readily perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the dwelling to the south. Therefore, while the Zoning Code requires a minimum 8 foot side yard setback and 4 foot open clearspace side yard setback, in this particular case, the encroachment is so minor that it will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling complies with the minimum yard setbacks requirements of the Zoning Code.

There were no objections from any of the participating government agencies or any surrounding property owners.

Ms. Gina Bagarina
March 15, 1995
Page 4

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 shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. All other applicable State and County rules and regulations shall be complied with.

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

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,


VIRGINA GOLDSTEIN
& Planning Director

RHY:rld
1248Q

xc: West Hawaii Office