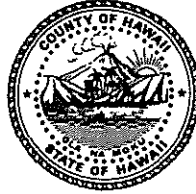


Stephen K. Yamashiro
Mayor



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
P 008 113 615

May 1, 1995

Ms. Ann L. Brewer
66-190 Kaamooloa Road
Waialua, HI 96791

Dear Ms. Brewer:

Variance Application No. 647 (95-14)
Applicant: Ann L. Brewer
Variance from Minimum SIDE YARD SETBACK Requirements
Tax Map Key: 1-1-39: 163

After reviewing the complete application, the Planning Director's action is to grant the variance request and approve the existing single family dwelling with a SIDE YARD SETBACK SETBACK of 17 FEET and the CORRESPONDING SIDE YARD CLEARSPACE REQUIRED of OPEN PROJECTIONS in lieu of the minimum 20 feet side yard setback and minimum 14 feet side yard clearspace required by Zoning Code secs. 25-156(a)(2) and 25-66(a) and (a)(1).

Based on the following findings, the Planning Director has concluded that the variance request from the minimum side yard and open side yard clearspace setback requirements should be approved:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Parcel 163 is located at the twenty-first utility pole on Plumeria Street in the Fern Acres Subdivision (formerly Crescent Acres Subdivision), Keaau, Puna, Hawaii, TMK: 1-1-39: 163. The lot area is two acres.
2. On parcel 163 there is one existing single family dwelling. It was issued Building Permit No. 851514 (opened: 8/19/85; closed: 1/4/95); the building permit lists the former landowner of par. 163 as Robert E. and Schillaci L. Adams. Real Property Tax records also list another former landowner, Marc Mignard.

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The dwelling received all necessary approvals of the Department of Public Works - Building Division.

3. Survey map (10/5/94) prepared by Registered Land Surveyor Robert S. Bright (#4337) shows the existing SINGLE FAMILY DWELLING with a 17 foot side yard setback. As shown, the dwelling's wall line encroaches into the setback of the south side yard clearspace by 3.0 feet.
4. According to the applicant, Ms. Brewer, she is purchasing parcel 163 from Mignard; the purchase includes the existing as-built dwelling, and the conveyance included the land survey that discovered the setback encroachment.
5. In 1985 plans were submitted to the Planning Department for building permit approval. Department approval of these plans would have been contingent upon a site plan representing compliance with all minimum setbacks required of the proposed dwelling. It has been approximately 10 years since the construction of the existing dwelling was approved by the County.
6. Extrapolating from the complete application, the 3.0 foot encroachment appears to be an error in the construction staking and siting of the dwelling on parcel 163. According to the applicant, Ms. Brewer, many houses in the Fern Acres Subdivision were built encroaching into the minimum setbacks or placed on the wrong lot because of incorrect staking when the subdivision was first created. A review of the record on this lot did not find evidence to indicate otherwise.
7. The petitioner is trying to resolve a situation which she had no control over, and in good faith the petitioner submitted a certified survey to ensure the disclosure of all facts concerning the dwelling encroachment.
8. The variance application was filed with the Planning Department on FEBRUARY 17, 1995.

Therefore, in considering the foregoing facts, 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.

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The subject property is a narrow two acre rectangular shaped lot (100' X 87.2"). The dwelling encroachment is three feet into the side yard and reduces the required 20 feet side yard setback to 17 feet. The encroachment is minor because it is not perceptibly visible or readily detected as an encroachment in to the side yard. Moving the existing dwelling would be prohibitive.

INTENT AND PURPOSE

1. Adequate Light & Air Circulation, Open Space. The intent and purpose of requiring building setbacks within a subdivision is to have adequate air and light circulation between structures and property lines. The adjacent parcel to the north of parcel 163 is devoted to agricultural activity and a black screen greenhouse is the only structure near the encroachment. The existing dwelling on the subject property is presently situated 17 feet from the north side property line. Therefore, there is a 3 feet encroachment of the existing dwelling into the north side yard setback.

Minimal Cumulative Effect. Despite the encroachment its cumulative effect over the past ten year period has been minimal at best or negligible at least. Because in the ten year period preceding the variance application no complaints have been made to the Planning Department of the setback violation on parcel 163; as a result, the encroachment appears to be visually imperceptible because it has not been noticed by sight inspection either by lay person or building inspector. Because of its apparent negligible effect the encroachment should not diminish the requirements for adequate light, air and open space between the existing dwelling and the adjoining lots.

Although the Zoning Code requires a minimum side yard setback of 20 feet for a structure wall line and a minimum 14 feet side yard clearspace for open projections, in this case the granting of a setback variance would be for a minor encroachment that does not appear to have a visual, physical or adverse impact to the adjacent properties.

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The rest of the existing dwelling complies with the minimum yard setback requirements of the Zoning Code.

Written objections were not submitted from any of the participating government agencies or any surrounding property owners.

Based on the foregoing findings, the 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 area's 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 variance approval shall be recorded in the conveyance document of the subject property and a copy of this document shall be submitted to the Planning Department within a year from the effective date of the variance approval.
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 contact Earl Lucero of this department at 961-8288.

Sincerely,

Virginia Goldstein
VIRGINA GOLDSTEIN
Planning Director

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*Conditions
to be
deleted
5/1/96
mjs*