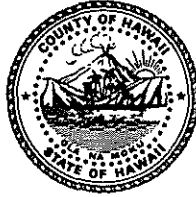


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED MAIL
Z 416 228 771

August 2, 1995

Mr. Dennis W. Haserot
Project Consulting
P. O. Box 6251
Kamuela, HI 96743

Dear Mr. Haserot:

Variance No. 675 (VAR 95-40)
Applicant: JIM & BEVERLY OHLMAN
Variance from Minimum SIDE YARD SETBACK
Tax Map Key: 5-5-04:07, Lot 14

After reviewing the complete application, the Planning Director's action is to GRANT THE VARIANCE REQUEST and APPROVE the existing tractor garage with a 16.8 FEET and a 17.5 FEET SIDE YARD SETBACK FROM THE EAST SIDE BOUNDARY LINE of TMK: 5-5-04:07 in lieu of the minimum 20 feet side yard setback required by Zoning Code Sec. 25-156(a)(2).

The approved variance is based on the following findings.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Location Description. Parcel 07 is located in the Puepea - Kokoiki Homesteads, with a portion of the parcel's northeast property line fronting on the south side of Ilikini Road approximately 1500 feet east of the Mahukona-Hawi Road in Hawi, North Kohala, Hawaii. TMK: 5-5-04:07. Lot area: 7.782 acres. County zoning: Agriculture 20 acres (A-20a); State Land Use: "Agriculture".

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2. Improvements on Record. On parcel 07 there is a first existing single family dwelling under Building Permit No. 885132 (opened: 2/16/88; closed: 6/16/88). Ohana Dwelling Permit No. 756 (5/16/88) was approved for a second dwelling constructed under BP 895198 (opened: 2/15/89; closed: 1/8/91). The structure requiring the variance is the tractor garage; it was issued BP 935807 (opened: 8/18/93; closed: 1/4/94). The tractor garage received all necessary approvals of the Department of Public Works - Building Division.
3. Survey map (03/23/95) prepared by Registered Land Surveyor Dennis H. Nakaoka (#5500) shows the tractor garage with a 16.8 and a 17.5 feet setback from the east side property line of parcel 07. As shown, there is a wall line encroachment in the side yard setback of 3.2 and 2.5 feet.
4. Site Conditions. According to the applicant, the building plans of the tractor garage was approved with 20 feet side yard setbacks. The survey discovered not only the setback encroachment but also that the existing property fence line is offset from the side boundary approximately 3 feet onto the adjoining parcel. The survey evidence seems to confirm that the tractor garage was located relative to the side property fence line, rather than the actual boundary line; consequently, the survey evidence validates the side yard encroachment to be an error in the construction staking and siting of the building.
5. Zoning Code yard setback requirements of building site plans are determined, reviewed, and approved by the Planning Department. Department approval of the above mentioned building plans would have been contingent upon a site plan representing compliance with all minimum setbacks required of the proposed structure.
6. The subject property is a 7.782 acre parcel. The building encroachment is between 2.5 and 3.2 feet into the side yard and reduces the required 20 feet side yard setback between 17.5 and 16.8 feet. The physical and visual encroachment had gone unnoticed by the landowners and the adjoining property owner as well as having passed county building inspection. The encroachment, as a result, appears to be a minor one because it is not perceptibly visible or readily detected as an encroachment into the side yard; in addition, it does not provide the owner any advantage since adequate space exists on the lot to accommodate the building. Moving the existing dwelling would create undue and excessive hardship to the landowner.

7. The landowners are trying to resolve a situation which she had no control over, and in good faith submitted a certified survey to ensure the disclosure of all facts concerning the structure encroachment.

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 parcel 07.

INTENT AND PURPOSE

1. Adequate Light & Air Circulation, Open Space. The intent and purpose of requiring building setbacks is to have adequate air and light circulation between structures and property lines.

The tractor garage encroachment is situated between 16.8 and 17.5 feet and creates an approximate 3 feet encroachment into the east side yard. There are two lots immediately adjacent to parcel 07's encroachment area. To the east and the northeast are TMK: 5-5-04:51 of 4.934 acres and TMK: 5-5-04:06 of 8.15 acres. Both adjoining lots as well as other surrounding parcels are all in the "Agriculture" district. The larger agricultural lot areas of the adjoining parcels seem to contribute in providing adequate air, light, space, and circulation to buffer and minimize the side yard setback encroachment on parcel 07.

Minimal Cumulative Effect. Despite the encroachment its cumulative effect since construction has been minimal at best or negligible at least. Because in the period preceding the variance application no complaints have been made to the Planning Department of the setback violation on parcel 07; as a result, the encroachment appears to be visually imperceptible - it has gone unnoticed by sight inspection by either 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 tractor garage and the adjoining lots.

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

Mr. Dennis W. Haserot
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The remainder of the structure complies with the minimum Zoning Code yard setback requirements.

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
Planning Director

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