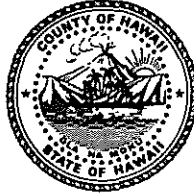


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director
Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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PD Var.687

CERTIFIED MAIL
Z 416 228 789

August 29, 1995

Mr. Bret Marsh
Bret Marsh Drafting Service
P. O. Box 10939
Hilo, HI 96720

Dear Mr. Marsh:

Variance Permit No. 687 (VAR 94-62)
Applicant: VINCENT AND LEONILA BALAIS
Variance from Minimum SIDE YARD SETBACK Requirement
Tax Map Key: 1-6-064:263, Lot 8312

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow an existing agricultural accessory building with a 8.5 foot \pm side yard setback in lieu of the minimum 20 foot, Article 8 (Agricultural Districts), SECTION 25-156 (a) (1) (Minimum yards).

The subject property is located in Orchid Land Estates Subdivision, Keaau, Puna, Hawaii. The property's address listed on Building Permit Number 890079 is 16-1332 Pahoa Highway and is on the Volcano side of the Pahoa Government Road approximately 1000 feet beyond the intersection of Pohaku Drive and Pahoa Government Road. The subject 1.00 acre + parcel is zoned Agricultural (A-3a) by the County and designated Agriculture by the State Land Use Commission. The subject property is commonly referred to as tax map key parcel number 1-6-64:263, Lot 8312.

FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum sideyard setback requirements for the existing accessory building.

The applicant's "ATTACHMENT TO" submitted with the variance application on October 26, 1994 states in part:

"We are licensed as Balais Mac Nuts (GE ID 30049515) to grow, harvest and sell our macadamia nuts, guavas, avocados and bananas. Our principal buyers are Hawaiian Legends, Inc. and Hawaiian Sun Products, Inc. Currently, we are farming approximately 3 1/2 acres. In addition to our lot, we have crops on 3 other parcels. (refer to the attached location map) Farming has always been our way of life. Since our arrival from the Philippines in the late 1970's, we have been U.S. citizens and have chosen to make Hawaii our home. For the past 14 years we have worked hard to make our family farm a successful operation. All equipment, supplies, preparations for planting and harvesting and storage of the same take place from our home. With over 130 mature macadamia nut trees as our main crop and the rapid growth of our other crops our need for additional storage and work area were ever increasing.

Our home also functions as a nursing home (DBA ARCH/ BE ID 30047540). The need to provide for adequate covered space for those under our care and to meet our expanding needs we constructed a storage building (permit #89-1081). At the time we considered this new storage building would be sufficient. However, during the course of its construction it became apparent that additional bathroom facilities and a recreation/packing type area would be convenient to better care for our elderly as well as to provide for a covered space to prepare our crops for market.

The location of the existing plumbing and cesspool required that we attach our new structures on to the south side of our permitted storage building. Any other location would have caused us to remove existing concrete driveways and walkways. (See attached site plan). We did not consider any other alternatives. Being practical was our main objection.

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Upon completion of our project we called for final inspection. We were informed by Patrick Tanimoto, Building Inspector - County of Hawaii that we would need to have plans drawn and permits issued on all structures attached to the permitted storage building. We contacted Bret Marsh of Bret Marsh Drafting Service to prepare the necessary plans and assist us in getting our permits. Mr. Marsh, in association with Ray Keuning, S.E., has completed the "as built" drawing with the required upgrades. a copy of these plans have been attached for your review.

We wish to bring our structures to conformity with all county codes and Ordinances. Our negligence has cost us a great deal of time and money. Your consideration will be much appreciated."

Pursuant to an extract from the Real Property Tax Office, it appears the original dwelling the existing building improvement were built and established by the applicants.

The affected portion of the existing storage building was permitted and built under Building Permit No(s). 890079 and 891081.

A site plan, drawn to scale, was submitted with the subject variance application on October 26, 1994, showing the existing single family dwelling and storage building improvement. The site plan shows the existing storage building and building encroachment into the affected minimum twenty (20) foot wide ("20'-0" SIDE") side yard setback area. The petitioner is trying to resolve the situation and has submitted amended plans to permit the existing building improvement. The petitioner and owners acknowledge the outstanding building permit and have prepared amended building plans for any additional building permit(s) required for the existing structure built and established before October 26, 1994.

Therefore, in considering the foregoing facts, there are special or unusual circumstances applying to the subject property which exist to a degree which deprives the present owners 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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ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicants include removing the building encroachment together with the affected roof resulting in a smaller storage space, re-siting the existing storage within the building envelope prescribed by the Zoning Code, and other similar building design alternatives. The re-siting or remodeling of the existing storage building built and established on the property is economically unreasonable and would disrupt the storage building's design, compromise building integrity, and change the structure's function and interior relationship.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to provide space, admit light, promote air circulation, and provide a separation between permitted structures in case of a fire or emergency, etc. The existing dwelling and original storage building on the subject property met with and complied with all setback requirements when it was originally constructed. The existing building improvement and the subject building encroachment was constructed under building permits issued to the applicant(s)/owner(s). The subject storage building and building encroachment is architecturally compatible with the existing dwelling. The most directly affected property is the vacant property to the northeast (parcel 262). No objections from the owner(s) of parcel 262 and the surrounding property owners were received by the Planning Department. As such, it appears the building encroachment into the side yard setback(s) will not visually, physically or adversely affect the rights of the property owners of parcel 262. In addition, the storage building will not be used as a habitable area and will not affect or detract from the character of the area and neighborhood.

The subject variance was deemed complete by the Planning Department on November 30, 1994 and by discussion and mutual agreement and understanding by and between Mr. Bret Marsh and staff, the decision date by the Planning Director would be extended and deferred until August 31, 1995.

There were no objections from the surrounding property owners or comments received from the Department of Public Works, Building Division to the subject variance request.

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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 applicants/owners, its assigns or successors, shall be responsible for complying with all stated conditions of approval;
2. The applicants/owners acknowledge the subject building encroachment and use within the subject storage building and use within subject building encroachment was built and established without a building permit indifferent to Building Permit No. 891081. The applicants/owners will apply for and secure a building permit for the outstanding building improvement and comply with all other laws, rules, regulations, and requirements of State and County agencies. The applicants/owners, successors or assigns shall indemnify and hold the County of Hawai'i 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;
2. The approval of this variance is only from the Zoning Code minimum side yard and clear space requirements; and,
3. Future building use and building improvement shall be subject to State and County regulations pertaining to occupancy and building.

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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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