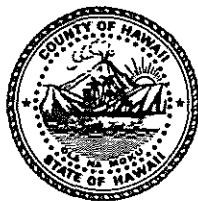


Stephen K. Yamashiro
Mayor



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
Z 095 323 627

August 7, 1996

Mr. Ronald W. Roberts
P. O. Box 383104
Waikoloa, HI 96738

Dear Mr. Roberts:

Variance Permit No. 766 (VAR 96-10)
Applicant: Ronald W. Roberts
Request: Variance From the Minimum Yard Requirements
of Chapter 25, Zoning
Tax Map Key: 6-8-008:032, Lot 291

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 766 allows the building with a minimum nine (9) foot side yard in lieu of the minimum ten (10) foot side yard and foundation walls and the portion of a wall with a minimum nine (9) foot side yard requirement in lieu of the minimum ten (10) foot side yard and a portion of a wall to remain within the rear yard with a minimum eighteen (18) foot rear yard instead of the minimum twenty (20) foot minimum rear yard requirement, pursuant to, Article 4, Single-Family Residential Districts, Section 25-124, Minimum yards, (2) (A) (B) and Section 25-66, Projections into required yards and open spaces.

The subject property is Lot 291, being a Portion of R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G.D. Hueu, at Waikoloa, South Kohala, Island and County of Hawaii and is within the Waikoloa Village, Unit 1-B (F.P. 1189), Subdivision. The property and existing building improvements thereon is commonly identified by the tax map key parcel number, TMK: 6-8-008:032, Lot 291.

FINDINGS AND RECOMMENDATION

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

8177

AUG 12 1996

Mr. Ronald W. Roberts
Page 2
August 7, 1996

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 14,631 square foot parcel is within the Waikoloa Village Subdivision. The parcel is zoned Single-Family Residential (RS-10) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).
2. The existing split level single family dwelling, and related building improvements were issued Building Permit No. 841157, 841477, and 965128 by the Department of Public Works (DPW), Building Division. The building permits were closed by the DPW, Building Division on October 21, 1985 and March 5, 1996.
3. A recent survey map dated, prepared and certified by Wes Thomas and Associates, Inc., shows building encroachments within the parcel's rear yard and three (3) side yards. The location of the existing dwelling within the side yard exhibits the following or range of dimensions of 9.2 feet +/-, to 9.5 feet between the face of the existing dwelling's wall and the affected side property line. The dwelling protrudes approximately two (2) feet +/- into the rear yard.
4.
 - a. Building Permit Nos. 841157 and 841477 were issued to the original owners or permittees, by the Department of Public Works (DPW), Building Division, to construct a new six (6) bedroom split level dwelling and other related site improvements. Subsequent to the issuance of the original building permit, the electrical permit and plumbing permit were obtained from the Department of Public Works, Building Division. The original building permits were both closed by the DPW, Building Division on October 21, 1985.
 - b. Building Permit No. 965128 was issued to the present owners, by the DPW, Building Division, for after-the-fact building improvements and closed by the DPW, Building Division on March 5, 1996.

Mr. Ronald W. Roberts
Page 3
August 7, 1996

5. The Zoning Code requires a site plan and building details, drawn to scale, including appropriate map graphics and dimensions, to identify and understand the location and size of all existing and proposed new building improvements. It appears a site plan and building construction plans submitted with the original and the subsequent building permit application were reviewed and approved by the Planning Department on June 29, 1984 and again on August 9, 1984. A copy of the original site and building construction plans were not submitted with the subject variance application.
6. The applicants contend they were unaware the dwelling and portions of the dwelling foundations "AS BUILT" did not comply with minimum building side yards.

The applicant(s) recently discovered and identified the existing building encroachments within the rear and side yards. The applicants became aware of the building encroachments during and after a modern survey by a Registered Land Surveyor was performed and a map or site plan, drawn to scale identifying and showing the property boundaries, "AS BUILT" was completed and examined.

Therefore, considering the foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner or applicant(s) 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 applicant. Alternatives available to the applicant include: removing the building encroachments together with the affected roof eave resulting in a smaller living space; acquiring additional property; remove the building encroachment or construct a new dwelling within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The removal of the building encroachments or the re-siting, redesign, and remodeling of the existing split level dwelling would be economically unreasonable and possibly disrupt the dwelling's building integrity, existing interior room circulation, and disrupt other site improvements.

Mr. Ronald W. Roberts
Page 4
August 7, 1996

The applicant(s) on their own volition are honestly trying to resolve the encroachment problem not intentionally created by them. No evidence has been found to show indifference or premeditation by the previous owners to deliberately or intentionally allow the building encroachments to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owners/applicants recited above. However, these alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners when a more reasonable alternative is available by the granting of the subject variance request.

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 split level dwelling and subsequent building improvements were constructed under three (3) building permits issued to the past and current owners. Building inspections during the course of permitted building construction during the life of the building permits did not disclose any setback irregularities. The current owners or the applicant felt all Zoning Code, building permit requirements and procedures during the construction of the original dwelling were followed and County building requirements were satisfied.

The building encroachments have been built within the property's side yards and rear yard. The building encroachments into the respective yards are not physically and visually obtrusive. The existing split level dwelling fits into the residential character of the surrounding neighborhood and surrounding land pattern and uses. The portion of the split level dwelling and related building encroachments into the affected yards will not visually, physically or adversely affect the rights of the property owners of the adjacent parcels. Therefore, it is felt the location of the existing building encroachments will not detract from the character of the immediate neighborhood within the subdivision. The existing building encroachments were induced by a error and misunderstanding or misinterpretation of the minimum building "setback" requirements by the previous and current owners. The remaining portion of the existing dwelling complies with the minimum yards of the Zoning Code.

Mr. Ronald W. Roberts
Page 5
August 7, 1996

To date, one (1) objection was received from a property owner within the South Kohala district. The DPW, Building Division memorandum dated May 8, 1996 states, "The two story portion of the residence is 9.2' from the boundary. This is a violation of the Housing Code (10' minimum)." The Department of Finance-Real Property had no objection to the variance request.

The subject variance application was deemed complete by the Planning Department on March 15, 1996 and an extension of time until August 9, 1996 to render a decision was mutually agreed upon.

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 area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

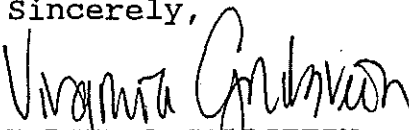
1. The applicant(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners have identified and acknowledged the subject building encroachments and use were built within the affected minimum side yards and rear yard prescribed by the Chapter 25, Zoning. The applicants/owners, successors or assigns shall indemnify and hold the County of Hawaii 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.
3. The approval of this variance is only from the Zoning Code minimum side yard requirements.
4. The applicant shall confer with the DPW, Building Division, to address and resolve the Housing Code violation.

Mr. Ronald W. Roberts
Page 6
August 7, 1996

5. Future building improvement shall be subject to State and County regulations pertaining to occupancy and building.

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

WRY:mjs
F:\WP60\WRY\FORMLETT\VARAPP14.MJS