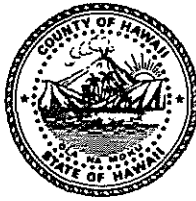


Stephen K. Yamashiro
Mayor



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 364 320 422

May 29, 1996

Ms. Mare Grace
P.O. Box 6593
Kamuela, HI 96743

Dear Ms. Grace:

Variance Permit No. 750 (VAR 96-11)
Applicant: Mare Grace
Proposed Garage Building and Related Site Improvements
Variance From the Minimum Side Yard Requirements
and Projections into Required Yard and Open Spaces of
Chapter 25, Zoning
Tax Map Key: 6-6-7:7, Lot 7

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow the proposed building and site improvements and allow a portion of the proposed structure to be constructed within the required minimum side yards of the subject property in lieu of the minimum ten (10) foot side yard, Article 4 (Single Family Residential), SECTION 25-124 (a) (1) (minimum yards).

The subject property is Lot 7, Lalamilo Houselots Subdivision, Unit 1, and is situated at Lalamilo, Waimea, South Kohala, Island and County of Hawaii. The property's address is 66-1773 Alaneo Street, Kamuela, Hawaii 96743 and is commonly identified or referred to by tax map key parcel number, TMK: 6-6-007:007, Lot 7.

FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 16,583 square foot parcel is within the existing Lalamilo Houselots Subdivision, Unit 1. The parcel is zoned Single Family Residential (RS-10) by the County and designated Agriculture "U" by the State Land Use Commission (LUC).
2. The existing dwelling on the submitted site plan is situated near the rear yard or southern property line which is oriented east to west direction and along the western side property line which is oriented in a north to south direction. The existing dwelling and existing cesspool is situated near and along an existing "rocky hillside" behind a cluster of existing mature paperbark and blue gum eucalyptus trees. The location, number of existing trees, and tree trunk "circumference is identified on the site plan in the variance file. The existing access via Alaneo Street and driveway on the property is situated between an existing garden and large blue gum eucalyptus tree and a tree cluster near the western side property line.

The applicant appears to imply that existing site conditions limit the proposed garage's location.

3. The plot or site plan, drawn to scale, submitted by the applicant with the variance application identifies the location of the existing dwelling, existing driveway location and landscaping features, the "proposed garage location", within the building envelope established by the minimum yards, etc. The proposed garage floor area measuring "5.0'" x 30'-0" or 150 square feet will be placed within the minimum ten (10) wide side yard and the 2'-6" +/- roof overhang or eave will be situated 2'-6" into the affected side property line's minimum five (5) foot wide clear space. For the record, it appears that 150 square feet or 25% of the proposed 600 square foot garage is proposed to be situated within the minimum ten (10) foot wide side yard and the affected portion of the roof or the roof's eave will be situated 2'-6" from the affected side property line.

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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: 1) Removing the existing landscaping materials to permit the siting of the proposed garage within the building envelope prescribed by the Zoning Code. 2) Acquire additional property from adjacent parcel 19, Lot 3 or parcel 61, Lot 2. 3) Attach the proposed garage to the existing dwelling and other similar design alternatives, etc.

The existing site's topography and existing landscaping on the property limits where the proposed garage may be located and the expense to acquire additional property appears to be remote and economically unreasonable. In addition, the orientation and existing dwelling and cesspool location may require extensive modifications or changes. The existing building design, building integrity and existing living conditions may be affected and is unwanted by the present applicant/owner.

The applicant/owner is applying for the variance and is honestly trying to address the existing site constraints. The location of the existing dwelling and related landscaping improvements was established on the property prior to acquisition by the applicant/owner. The Department of Public Works, Building Division and the Real Property Tax Office was unable to identify the specific building permit issued prior to or during 1968 to build and establish the existing dwelling.

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

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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 original dwelling was constructed by previous owner(s). It appears the original dwelling established in 1968 and previous owners or permittee complied with all building setback requirements and requested building inspections during the course of the dwelling's construction. The building permit requirements and procedures during the construction of the dwelling and existing site improvements appear to have been satisfied during 1968. Current extracts from the County Real Property Tax Office records show the dwelling was assessed from 1968 on to the present date.

The proposed garage design and use does not appear to be physically and visually obtrusive. The proposed garage will not change the existing residential character of the property and the residential appearance or "feeling" of the surrounding neighborhood. The proposed garage is a "accessory building and accessory use" under the Zoning Code. The proposed garage and related building improvement will not significantly detract from the existing residential structures, alter or change the existing surrounding buildings uses, and disrupt the surrounding land use patterns of the neighborhood and within the district. The overall height of the proposed garage is below the maximum permitted fifteen (15) foot building height and portions of the proposed garage's encroachment into the affected side yards will not visually, physically or adversely affect the rights of the property owners of parcel 6, Lot 6 and parcel 8, Lot 8. In addition, the proposed garage will not be part of the existing dwelling or classified as a habitable structure. The proposed and detached garage or carport is necessary to provide vehicle and property protection from inclement weather. Therefore, it is felt the location of the proposed garage will not significantly affect the adjacent parcels and detract from the character of the immediate neighborhood within the subdivision. The existing dwelling location was apparently affected by existing site topography and the location of planting material and mature trees on the property limit where additional buildings may be sited and established within the building envelope.

The subject variance application was deemed complete by the Planning Department on March 18, 1996 and by subsequent discussion with the applicant, the decision date by the Planning Director on the subject variance would be extended and deferred until May 31, 1996.

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There was one (1) written objection or "protest" from a landowner outside the existing the subdivision. The "protest" or objection dated April 26, 1996 has been included into subject variance for the record and future reference. No other objections were received from participating government agencies and from the adjacent property owners and other landowners within the existing subdivision.

Based on the foregoing findings and circumstances cited above, the request for a variance to allow a proposed garage on the subject property 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 to allow a proposed garage and related site improvements on the subject property is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

Variance Permit No. 750 is appealable pursuant to Section 25-27, Division 4, Variances, Chapter 25, Zoning Code.

Please bring a copy of the Variance Permit No. 750 to expedite the processing of the building construct plans and the building permit to construct the proposed garage and related site improvements.

2. The applicant/owner shall submit consistent site plans, drawn to scale, which show and identify the location of the proposed garage building and encroachments on site plan together with the building construction plans and secure a building permit to construct the garage on or before May 31, 1998. The present and subsequent 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.

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3. The approval of this variance to permit the proposed garage is only from the Zoning Code minimum side yard and minimum open space requirements.
4. 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

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xc: West Hawaii Office