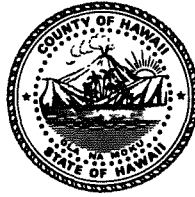


Stephen K. Yamashiro
Mayor



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

P 364 320 260

April 12, 1996

Ms. Lori Ferry
Lori Ferry Realty
282 Ululani Street, Suite A
Hilo, HI 96720

Dear Ms. Ferry:

Variance Application No. 728 (VAR 95-89)
Applicant: Laura E. Torngren, Et al.
Variance From the Minimum Side Yard Requirements
of Chapter 25, Zoning
Tax Map Key: 1-6-104:18, Lot 1

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to recognize the location of existing building and site improvements and allow a portion of an existing dwelling and water tank "AS BUILT" to remain within the required minimum side yards of the subject property in lieu of the minimum eight (8) foot side yard, Article 4 (Single Family Residential), SECTION 25-124 (a) (1) (minimum yards).

The subject property is Lot 1, Block "76", Land Court Application 1053, Map 80 and is situated at Keaau, Puna, Island and County of Hawaii and is within the Tiki Gardens Subdivision, and is commonly identified or referred to by tax map key parcel number, TMK: 1-6-104:18, Lot 1.

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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plus by Lori Ferry

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 8014 square foot non-conforming sized parcel is within the existing Tiki Gardens subdivision. The parcel is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC). The property is a nonconforming parcel because the size or 8014 square foot land area is below the minimum one (1) acre or 43,560 square foot minimum lot size zoning requirement and the State LUC's minimum lot or parcel requirement where all lots within existing or areas designated "A", Agriculture, must consist of or exceed a minimum lot area of one (1) acre or 43,560 square feet.
2. The subject single family dwelling was issued Building Permit No. 930318 by the Department of Public Works (DPW), Building Division on February 24, 1993.
3. A recent survey map dated November 7, 1995, prepared and certified by Imata and Associates, Inc., shows and disclosed the building encroachments within the parcel side yards. The location of the existing dwelling and water tank within the side yard exhibit the following or range of dimensions of 7.71 feet, 7.80 feet, 4.18 feet, and 4.40 feet between the face of the wall of the existing building improvements and the affected side property lot lines. The affected area of the existing dwelling consisting of approximately forty-two (42) feet by approximately four (4) inches and portions of the existing water tank up to approximately four (4) feet encroach into both side yards.
4. On February 24, 1993, Building Permit No. 930318 was issued to the legal owner or permittee, Mauka Ventures, by the Department of Public Works (DPW), Building Division, to construct a new dwelling and related building and site improvements. Subsequent to the issuance of the building permit, the electrical permit and plumbing permit were obtained from the Department of Public Works, Building Division. The building permit was closed by the DPW, Building Division on May 8, 1993.

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5. The zoning code requires a site plan, drawn to scale, including appropriate map graphics and dimensions, to identify the existing site and proposed new building improvements. It appears a site plan and building construction plans submitted with the building permit application were reviewed and approved by the Planning Department on January 28, 1993. However, a copy of the building permit's approved site plan was not submitted with the subject variance application.
6. The applicant contend a property stake or boundary corner was misplaced which introduced and caused a staking error during the siting and construction of the dwelling's foundation and a misinterpretation of the water tank's minimum required yards resulted in building encroachments into the side yards. No evidence has been found to show indifference or premeditation by the previous owners or permittee to recklessly ignore the zoning code.
7. Almost three (3) years has lapsed from the completion date of the existing dwelling and related site improvements dwelling. The applicant(s) discovered and identified an existing site and building condition and are asking for relief from the minimum side yard requirements to resolve an engineering error and building construction error which they had no participation or control over. The applicants became aware of the building encroachments during and after a modern survey was performed and site plan or map showing and identified existing site conditions and building encroachments 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

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affected roof eave resulting a smaller living space; acquiring additional property from the adjacent parcels 19, Lot 3 and 61, Lot 2.; demolish, design, and reconstruct or construct a new dwelling a water tank within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The re-siting, redesign of the three (3) year old dwelling built and established in 1993 before the applicant purchased the property is economically unreasonable and would disrupt the dwelling's design, compromise building integrity, and disrupt the location and function of the required and existing septic system the leaching pit.

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 or permittee 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 (VAR 95-89).

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 dwelling and water tank were constructed with a building permit issued to previous owners or permittee. There is no County water system in the subdivision and all dwellings will require an individual water catchment (IWC) system or a "water tank". The existing dwelling and separate water storage tank were built under a valid building permit and it appears the previous owners or permittee complied with all building setback requirements and requested building inspections during the course of building construction and life of the building permit. The building permit requirements and procedures during the construction of the dwelling and related site improvements appear to have been satisfied and the building permit was closed by the county on May 8, 1993.

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The building encroachments affect both side yards within the corner lot. The encroachment of the non-inhabitable water tank into both side yards is physically and visually the most obtrusive of the building encroachments. However, there is no County water system in this area of the Tiki Gardens Subdivision. As such, the existing dwelling and water tank fit into the residential character and "feeling" of the surrounding neighborhood and surrounding land pattern and uses. The overall height of the existing water tank is below six (6) feet and the portions of the water tank's encroachment into the side yards will not visually, physically or adversely affect the rights of the property owners of parcel 19, Lot 3 and parcel 61, Lot 2. In addition, the water tank is not part of the existing dwelling or classified as a habitable structure and is an integral part of most or all dwellings in this subdivision. Therefore, it is felt the location of the existing tank will not affect the adjacent parcels and detract from the character of the immediate neighborhood within the subdivision. The existing building encroachments were induced by an engineering staking error and misunderstanding or misinterpretation of the minimum building "setback" requirements by the previous owners or permittee. The remaining portion of the existing dwelling and water tank complies with the minimum yards of the Zoning Code.

The subject variance application was deemed complete by the Planning Department on December 29, 1995 and by subsequent discussion and letter from the applicants, the decision date by the Planning Director on the subject variance would be extended and deferred until April 12, 1996.

There was no objection from any of the participating government agencies or surrounding property owners.

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.

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2. The applicants/owners have identified and acknowledge the subject building encroachments and use were built within the affected minimum side yards 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. 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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