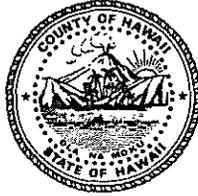


Stephen K. Yamashiro
Mayor



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 008 113 059

August 20, 1996

Ms. Lynn M. Nagata
1342 Kilauea Avenue
Hilo, Hawaii 96720

Dear Ms. Nagata:

Variance Permit No. (VAR 770)
Applicant: Lynn M. Nagata
Variance From the Minimum Front Yard Requirements
of Chapter 25, Zoning
Tax Map Key: 2-5-035:020, Lot 31-A

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to recognize and allow a portion of an existing dwelling "AS BUILT" to remain on and within one (1) of the two (2) front yards. The variance will allow a portion of existing dwelling to remain on the corner property with a twelve (12) foot front yard to be taken from the front property line along Hokulani Street in lieu of the minimum fifteen (15) foot front yard required, pursuant to Article 4, RS, Single-Family Residential Districts, Section 25-156, Minimum yards, (a) (2) and Section 25-66, Projections into required yards and open spaces.

The subject property, Lot 31-A, is a corner lot within the Kaumana Lani Subdivision, shown on File Plan 777, and situated at Ponahawai, South Hilo, Island and County of Hawaii. The property's address is 94 Hokulani Street and the parcel and existing building improvements thereon is commonly identified by the tax map key parcel and lot number, TMK: 1-5-035:020, Lot 31-A.

08663

AUG 26 1996

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow a portion of the existing dwelling to remain within one (1) of the two (2) front yard and respective open space requirements should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Pursuant to a DPW memorandum dated, June 27, 1996, the County condemned a portion of Lot 31 or a "5-ft. road widening strip" on January 1, 1978. Subsequently, Lot 31, originally containing 8,074 square feet, was further subdivided into Lot 31-A and Lot 31-B, respectively, for the previous land owners and the County by Subdivision No. 4254 on February 9, 1979. The subject parcel, Lot 31-A, is a non-conforming sized "lot of record" containing 7,474 square feet and Lot 31-B containing 600 square feet appears to be a "road widening strip". Lot 31-A and 31-B are zoned Single Family Residential (RS-10) by the County and designated Agriculture "U" by the State Land Use Commission (LUC).
2. The existing dwelling and related building improvements was issued Building Permit No. 912001 by the Department of Public Works (DPW), Building Division on September 27, 1991. Subsequent to the issuance of the building permit, the electrical permit and plumbing permit were obtained from the DPW, Building Division. Building Permit No. 912001 was closed by the DPW, Building Division on February 27, 1992.
3. A recent survey map dated "May 24, 1996" was prepared for applicant by Donald J. Murray, RPLS, and submitted with the subject variance application showing the dwelling and encroachments within the parcel's front yard. The distance between the "face" of the dwelling's wall and the affected front yard's property line along Hokulani Street is "12.78".
4. 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 applications were reviewed and approved by the Planning Department on November 16, 1988. Pursuant to the applicant, a copy of the building permit's original site

plan and approved building construction plans were not available and submitted with the subject variance application.

5. The applicant's transmittal letter dated May 14, 1996, states in part, "During the construction phase, an error was made by the contractor in using the wrong set of pins to indicate the setback lines on the Hokulani Street boundary. The Contractor had used the County's set of pins instead of the actual property boundary pins for this lot. The actual boundary pins are two feet inside of the County pins." In view of your statements and the recent survey and map of Lot 31-A, it appears the owner and the contractor utilized a "centerline monument" situated within the Hokulani Street right-of-way instead of Lot 31-A's boundary pins to establish and locate minimum building yards and the buildable area or building envelope within the property. No evidence has been found to show indifference or premeditation by the applicant and owner to ignore the minimum building yard requirements and the Zoning Code.

The applicant recently discovered and identified the existing building encroachments within one of the affected front yards and is asking for relief from the minimum front and open yard requirements of the Zoning Code to recognize and resolve the existing building encroachments. The applicants became aware of the building encroachments and extenuating circumstances and site conditions after a modern survey by a Registered Land Surveyor was performed and a map of the property, drawn to scale; identifying and showing Lot 31's property boundaries and the location of the existing 4-year+ old dwelling and related site improvements was completed and examined by the owner.

Therefore, considering the above and 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 a smaller living space; remove the

Ms. Lynn M. Nagata
Page 4
August 20, 1996

building encroachment and/or construct a new dwelling within the correct building envelope prescribed by the Zoning Code, and other design alternatives, etc. The re-siting, redesign of the building encroachments and changes to the existing dwelling would be economically unreasonable and possibly disrupt the dwelling's building integrity, and disrupt the location and function of the existing site improvements.

The applicant on her own volition is honestly trying to resolve the encroachment problem introduced during building layout prior to construction of the existing dwelling. No evidence has been found to show indifference or premeditation by the contractor, current owner or the permittees to deliberately or intentionally cause and allow the building encroachments to occur.

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.

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 applicant states and contends the existing dwelling and related building and site improvements were installed and constructed by a licensed contractor hired by the owner under the approved building permit for the dwelling issued to the owner or permittee. The existing dwelling and subsequent site and building improvements were issued and inspected by the County under valid building permits. Building inspections performed during the course of and during the life of the building permits did not disclose any building or building setback irregularities. The current owner and applicant felt all zoning code, building permit requirements, building and construction inspection procedures to build and establish the existing dwelling on the property had been followed and found to be satisfactory. The building permit for the dwelling was closed by the DPW, Building Division on February 27, 1992.

The applicant discovered the building encroachments were built into and within one (1) of the property's front yard. The building encroachment consisting of approximately 240 square feet +/- into the affected front yard are not physically and visually obtrusive. The existing dwelling is permitted and the physical building improvements is consistent and fits into the residential

character of the surrounding neighborhood and surrounding land pattern and uses. The portion of the dwelling and related building encroachments into one (1) of the two (2) front yards will not visually, physically or adversely affect the adjacent county road reserve lots, Lot 110, TMK: 2-5-035:062 and the 600 square foot "road lot", Lot 31-B, respectively, and the owners of Lot 30, TMK: 2-5-036:029, containing 7,474 square feet. Therefore, it is felt the existing building encroachments into the one (1) of the front yards will not affect the adjacent lots or detract from the character of the immediate neighborhood within the subdivision. The existing building encroachment was induced by a staking error and misunderstanding or misinterpretation of the boundary corners and the minimum front yard or building "setback" requirements by the owner and the owner's contractor. The remaining portion of the existing dwelling complies with the minimum yards of the Zoning Code.

The subject variance application was deemed complete by the Planning Department on May 29, 1996 and an extension of time to August 23, 1996 to consider and render a decision of the subject variance application was mutually agreed upon.

To date, no objections were received from the surrounding property owners, the public, and participating government agencies to the subject variance request.

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 acknowledge the subject building encroachments and use were built within the affected minimum front 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

Ms. Lynn M. Nagata
Page 6
August 20, 1996

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 front yard/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

WRY:cmr

F:\WP60\WRY\FORMLETT\VARAPP20.MJS

cc: Real Property Tax Office