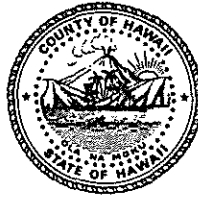


Stephen K. Yamashiro
Mayor



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

AMENDED

CERTIFIED MAIL
Z 095 324 134

February 24, 1996

C. BREWER HOMES, INC.
Mr. Eben Dale, Vice President
234 Waiuanuenue Avenue
Hilo, HI 96720

Dear Mr. Dale:

Variance Permit No. 807 (VAR 96-81)
Applicant: C. BREWER HOMES, INC.
Request: Variance From the Minimum Yard Requirements
of Chapter 25, Zoning
Tax Map Key: 9-5-009:043, Lot 16

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. 807 allows the existing building (single story dwelling) situated on the subject property with one side yard being a minimum seven and one-half feet (7.5') in lieu of the minimum eight (8) foot side yard Single-Family Residential Districts, Division 1, Section 25-5-7, Minimum yards, (a) (1) (B) and except as may otherwise be restricted, Section 25-4-44, Permitted Projections Into Yards and Open Spaces.

The subject property is Lot 16, Naalehu Subdivision, Second Series, being portions of Grant 2052 Ap.1 to Hailama and R.P. 3204, L.C. Aw. 8787-B Ap.1 to Kupule Poupouwela and Kaunamano, situated at Ka'u, Island and County of Hawaii. The property and existing building improvements thereon are more commonly identified by the tax map key parcel number, Tax Map Key: 9-5-009:043, Lot 16.

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FEB 25 1997

FINDINGS AND RECOMMENDATION

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 8,371 square foot 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 building and related site improvements was issued a building permit (B NO. 45185) by the Department of Public Works (DPW), Building Division on June 29, 1970. Building permit no. 45185 was closed by the DPW, Building Division on October 29, 1970.
3. The survey map, drawn to scale and dated December 10, 1996, prepared by Murray Smith and Associates, Ltd. and certified by Donald J. Murray, RPLS, shows the existing building and encroachments into the affected side yard. The existing building or dwelling exhibits the following range of side yard dimensions; "7.71" feet and "7.83" feet between the face of an existing building wall and the affected side property line.
4. a. Building Permit No. 45185 was issued to a previous owner and builder/permittees, by the Department of Public Works (DPW), Building Division, on June 29, 1970 to construct a new dwelling together with other necessary site and related building improvements. Subsequent to the issuance of the building permit, it appears the electrical permit and plumbing permit were also obtained from the DPW, Building Division. The required building inspections by the affected government agencies of the new dwelling and related site improvements occurred during the life of the B NO. 45185. B NO. 45185 was closed by the DPW, Building Division on October 29, 1970.

b. It appears Building Permit No. 45185 to construct the existing dwelling on Lot 16 was issued to the legal owner, "KAU DEVELOPMENT COMPANY" and built by "SWINERTON HAWAII VENTURE".

5. The Zoning Code was adopted by the County circa 1967. In 1970 the required copies of a site plan and related building construction plans, drawn to scale, including appropriate and necessary map graphics and building dimensions, to identify and understand the location and size of all proposed building improvements would be required to be submitted with the building permit application. It appears the original site plan and building construction plans submitted with the building permit application were reviewed and approved by the Planning Department on June 22, 1970. However, it appears copies of the approved site plan and building construction plans approved by the County in 1970 were not available or included with the subject variance application.

6. The applicant's statements included with the subject variance application imply the approved building and the existing building encroachments within the affected side yard went undetected by the County and unnoticed by the public for nearly 27 years.

The owner(s)/applicant(s) recently discovered and identified the existing building encroachments within the affected side yard. The applicants became aware of the building encroachments during a pending real estate transaction and after a modern survey by a Registered Land Surveyor was prepared and examined by the Planning Department.

Therefore, considering the foregoing facts and existing site improvements, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner(s)/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 owner(s)/applicant(s). Alternatives available to the applicant include the following: removing the existing building encroachments together with the affected roof eave resulting in a smaller living space; acquiring additional property from the adjacent property or the existing 10-foot wide pedestrian

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walkway; relocate the existing dwelling or construct a new dwelling within the correct building envelope prescribed by the Zoning Code, on the non-conforming sized lot and other similar design alternatives, etc. The removal of the building encroachments or the re-siting, redesign, and remodeling, etc. of the existing dwelling would be economically unreasonable and possibly disrupt the 27 year old dwelling's building integrity, existing interior room circulation, and disrupt other existing site improvements.

The previous and current owner(s) or applicant(s), on their own volition, are honestly trying to resolve 27 year old building encroachment problem. No evidence has been found to show indifference or premeditation by the previous owners or builder in 1970 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 design and building 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 permitted structure(s) and property lines. The existing dwelling and related building improvements were constructed under a valid building permit issued to the past and current owners. Building inspections of the premises and building construction during the life of the building permit did not disclose any setback irregularities. The builder and previous owners felt all Zoning Code, building permit requirements and government procedures were observed and all County building requirements were satisfied or met.

The building encroachments have been built within one of the property's side yards. The affected 105.00' side property line is also the side property line of the existing 10-foot wide pedestrian walkway. The 27-year old building encroachments into the respective side yard are not physically and visually obtrusive and have not affected or hindered public access use of the 10-foot wide pedestrian walkway. The existing 27 year old single story dwelling fits into the residential character along

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Maia Street. The existing building encroachments do not depreciate or detract from the character of the surrounding neighborhood, residences, public uses, and the existing and surrounding urban land patterns. It appears, the existing building encroachments established 27 years ago within the affected side yard have not visually, physically or adversely affected the rights of the property owners of the adjacent parcels or use of the pedestrian walkway. Therefore, it is felt the present location and existing building encroachments will not detract from the character of the immediate neighborhood within the subdivision. It appears the existing building encroachments were induced by a cumulation of foundation and construction errors or misunderstanding or misinterpretation of the minimum building yards or "building setbacks" by the previous owners and/or builder. The bulk or remaining portion of the "living area" within the existing dwelling complies with the minimum yards of the Zoning Code.

To date, no objections were received from the surrounding property owners within the Ka'u district, the affected public agencies, and the public.

The subject variance application was received on December 12, 1996 and pursuant to a telephone conversation with Mr. Eben Dale, an extension of time until February 21, 1997 to render a decision on the subject variance application 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 residential use were built and established within one of the side yards of the subject property. A portion of the existing building or dwelling does not comply with the minimum side yard requirements prescribed by the Chapter 25,

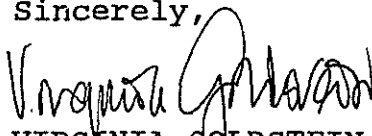
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Zoning dated December 7, 1996. The applicants/owners, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out 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 improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

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xc: Real Property Tax Office