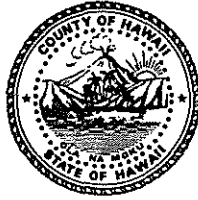


Stephen K. Yamashiro
Mayor



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

May 17, 1996

Mr. Edwin Y. Kuniyoshi
Belt Collins Hawaii
680 Ala Moana Blvd., First Floor
Honolulu, Hawaii 96813-5406

Dear Mr. Kuniyoshi:

Variance Application WH(VAR 96-9)
Variance No. 735
Applicant: Mauna Kea Properties, Inc.
Variance from minimum side yard requirements
of the Zoning Code, Chapter 25, Article 6, Section 25- 140(a)(2)
Tax Map Key: 6-2-002:013

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to an existing two-unit duplex with a zero foot side yard in lieu of the minimum 8 foot side yard as required by Chapter 25, Article 6, Section 25-140(a)(2).

The subject property is located at Lot J, Portion of Royal Patent 2237 Land Commission Award 8518-B, Apana 1 to Kanehoa (Certificate of Boundaries No. 63) at Ouli, Waimea, South Kohala, Hawaii, TMK: 6-2-002:013, Lot J.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Bluffs at Mauna Kea consisting of 44.19 acres of land.

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2. The subject duplex dwelling was issued Building Permit No. 920963 on May 13, 1992 and closed on August 29, 1994. Each unit consist of approximately 3,985 square feet separated by a common wall. Each unit has its own separate driveway access and garage.
3. A survey map prepared by Belt Collins Hawaii on March 1, 1996, shows the existing duplex with a zero foot side yard. The subject duplex would encroach into the side yard by 8 feet when the proposed subdivision is completed.
4. The developers at that time, received all of the necessary Department of Public Works, Building Division approvals for duplex.
5. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to be adhere to for the construction of the proposed duplex in 1992.
6. The building was constructed as a two-unit duplex residence as a model home for sale purposes for a future 44-unit duplex condominium project. However, there have been no sales made, and a decision was made by the developer to convert the project into a 29-lot, single family residential subdivision using the duplex as the location for the single-family lots. The new lots will be on the same location on the subdivision plan as are indicated by the Belt Collins Hawaii survey.
7. The developer intends to sell the two-unit duplex as two dwellings rather than condominiums under the horizontal property regime.
8. The applicant submitted Subdivision Application (96-5) on March 12, 1996 for a 29 lot subdivision of TMK: 6-2-002: 013 (The Bluffs at Mauna Kea Subdivision).
9. In the immediate area and district, the existing Mauna Kea Fairways Unit I was approved for a zero lot line development and the Kawaihae Village Planned Unit Development is an example where clustered dwellings were approved with a zero lot line. In the Kawaihae Village Planned Unit Development, there are duplex buildings on separate lots with common walls.
10. The variance application was acknowledged as received by the Planning Department on March 14, 1996. A letter dated May 14, 1996 was received from the applicant mutually agreeing to an extension of time until June 1, 1996 to complete the processing

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of the variance application.

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant 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

1. The demolition and reconstruction alternative, including the architectural alterations or design changes to the existing duplex building to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.
2. The Department of Public Works has recommended approval of the variance, if the applicant makes the building conform to the Building and Housing Code requirements. A condition of approval will be that the applicant conform to the requirements from the Department of Public Works or secure the necessary variances from the Board of Appeals.
3. Therefore, while there are other alternatives available the more practical solution is the granting of the variance.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. However, the Zoning Code also allows zero lot line development through Planned Unit Developments in certain instances. In the immediate area and district, the existing Mauna Kea Fairways Unit I was approved for a zero lot line development and the Kawaihae Village Planned Unit Development is an example where clustered dwellings were approved with a zero lot line. In the Kawaihae Village Planned Unit Development, there are duplex buildings on separate lots with common walls.

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Therefore, while the Zoning Code requires a minimum 8 foot side yard, in this particular case, the zoning allows the duplex building which was properly permitted and constructed. The existing multiple family residential zoning also allows the existing duplex. As such, the existing duplex and proposed zero lot line development to create two separate lots is a nationally readily recognized zoning tool in dealing with circumstances such as this. The proposed subdivision of the existing duplex will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing duplex complies with the minimum yard requirements of the Zoning Code.

There was one letter of objection from the general public.

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 Code 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 areas character and to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. The proposed lots for the subject duplex shall comply with the minimum building site area requirements of the Multiple Family Residential (RM-1.5) zone district.
4. Comply with the Department of Public Works, Building Division requirements or obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
5. All other applicable State and County rules and regulations shall be complied with.

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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: Gayle L. Foster
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