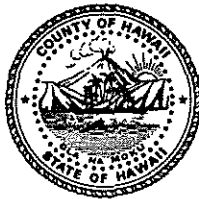


Stephen K. Yamashiro
Mayor



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
Z 095 324 156

May 23, 1997

Steven S.C. Lim, Esq.
Carlsmith Ball Wichman Case & Ichiki
P. O. Box 686
Hilo, HI 96720

Dear Mr. Lim:

Variance Permit No. 828 (VAR 97-15)
Applicant: LORI ALISON THAL
Request: Variance From the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning
Tax Map Key: 3-4-003:002

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. 828 allows the existing building (one story farm dwelling) situated on the subject property to have one front yard being minimum seven (7.0) feet in lieu of the minimum twenty-five (25) foot front yard required for the subject property zoned Agricultural (A-20a), Division 7, pursuant to Section 25-5-77, Minimum yards, (a), and a clearspace of 4.0 feet to 17.00 feet in lieu of a minimum nineteen (19) feet front yard open space requirement pursuant to Section 25-4-44 (a) (1), Permitted Projections Into Yards and Open Spaces.

The subject remnant property is a Portion of Grant 2330, situated on the northeast side of the Hawaii Belt Road at Kahinano, North Hilo, 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: 3-4-003:002.

FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 0.933 acre or 40641+ square foot parcel is zoned Agricultural (A-20a) by the County. The property is designated Agriculture "A" by the State Land Use Commission (LUC).
2. The existing building and related site improvements were issued a building permits (B Nos. 941519 and 950840) by the Department of Public Works (DPW), Building Division on October 17, 1994, and May 23, 1995, respectively. B No. 830394 and B No. 950840 were closed on May 23, 1995, and January 3, 1996, respectively.
3. The site plan drawing, drawn to scale and dated March 29, 1996, and boundary amendments dated May 16, 1996, and February 14, 1997, by Robert T. Shirai, PLS correctly identifies and denotes minimum building setback lines and identifies the location of two (2) dwellings, two (2) water tanks, and two (2) cesspools on and within the subject property. The existing single story farm dwelling exhibits the following range of yard dimensions; 7.80 to 19.65 feet between the face of the farm dwelling and the respective front property lines and 10+ feet between the face of the water tank connected to the "single-family dwelling" and the respective front property line.
4. To date two (2) building permits B No. 941519 and B No. 950840 were issued to Richard C.D. Nelson, by the Department of Public Works (DPW), Building Division, to construct two (2) dwellings together with other necessary site and related building improvements. Subsequent to the issuance of the building permits, it appears the electrical permits and plumbing permits were also obtained from the DPW, Building Division. The required building inspections by the effected government agencies of the new dwelling and related site improvements occurred during the life of both building permits. Building permit no. 941519 and 950840 were respectively closed by the DPW, Building Division on June 21, 1995, and January 3, 1996.
5. It appears the original and subsequent site and building construction plans submitted with the approved building permits were reviewed and approved by the Planning Department and other affected government agencies.

6. The applicant's statements included with the subject variance application imply the approved building and existing building encroachments within the affected front yard went undetected by the County, other government agencies, and the public.

The owner(s)/applicant(s) recently discovered and identified the existing building encroachments within a front yard. The current owner or applicant became aware of the building encroachments during a pending real estate transaction and after a detailed boundary or site plan was ordered and prepared by a Registered Professional Land Surveyor for inclusion with the subject variance application.

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 effected roof eaves resulting in a smaller living space and relocating water tank; or relocate the dwelling or construct a new dwelling and water tank 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-sitting, redesign, and remodeling, etc. of the existing dwelling and water tank would be economically unreasonable and possibly disrupt the dwelling's building integrity, existing interior room circulation, and disrupt other existing site improvements.

The current owner(s) or applicant(s), on her/their own volition, is/are honestly trying to resolve three (3) year old building encroachment problems. No evidence has been found to show indifference or remediation by the previous owners or builder in 1994 or during 1995 to deliberately or intentionally allow any 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.

Steven S.C. Lim, Esq.

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INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are 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 permits issued to the previous owner. Building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any dwelling or water tank setback irregularities. The builder or previous owner 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 front yards. The one (1) or three (3) year old building encroachments into the respective front yard are not physically, visually obtrusive from the existing Hawaii Belt Road. The existing dwelling's design and related site improvements are similar to other dwellings near the property. The 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 over two years ago within the affected front yard have not visually, physically or adversely affected the rights of the property owners of the adjacent vacant parcels. Therefore, it is felt the present location and existing building encroachments will not detract from the character of the immediate neighborhood. It appears the existing building encroachments were induced by a cumulation of construction errors or misunderstanding or misinterpretation of the minimum building yards or "building setbacks" by the previous owner/builder. The bulk or remaining portion of the "living area" within the existing farm dwelling and the affected water tank near the single family dwelling identified on the applicant's site plan complies with the minimum yards of the Zoning Code, dated December 7, 1996.

The subject variance application was deemed complete on February 27, 1997. Pursuant to a field inspection, an extension of time until May 20, 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.

Steven S.C. Lim, Esq.

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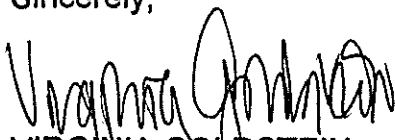
May 23, 1997

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 applicant(s)/owners have identified and acknowledged the subject building encroachments and residential use were built and established within one of the front yards of the subject property. A portion of the existing farm dwelling and a water tank located on the subject tax map key property does not comply with the minimum front yard requirements prescribed by the Chapter 25, Zoning dated December 7, 1996. The applicant(s)/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 and front yard and related open space 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:mlm

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xc: Real Property Tax Office