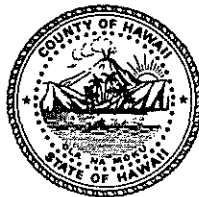


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED MAIL

P 364 320 061

July 23, 1997

Dr. Rikko Levin Varjan
P. O. Box 1501
Hilo, HI 96755

Dear Dr. Varjan:

Variance Permit No.838 (VAR 97-29)

Applicant: RIKKO LEVIN VARJAN

Owner: RIKKO LEVIN VARJAN

Request: Variance From the Minimum Side Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning

Tax Map Key: 5-2-007:007

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.838 allows the proposed building (farm dwelling) to be situated on the subject property to have one front yard being minimum five (5.0) feet in lieu of the minimum twenty (20) foot side yard required for the subject property zoned Agricultural (A-20a), Division 6, pursuant to Section 25-5-66, Minimum yards, (a), and a clearspace of two and one-half (2.5) feet or 30 inches in lieu of a minimum fourteen (14) feet front yard open space requirement pursuant to Section 25-4-44 (a) (1), Permitted Projections Into Yards and Open Spaces.

FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of all of Land Commission Award 8679 tp Kaaiiai at Aamakao, North Kohala, Island and County of Hawaii. The vacant property is commonly identified by the following tax map key (TMK) parcel number, TMK: (3) 5-2-007:007.
2. The subject 1.30 acre foot parcel was zoned Agricultural (A-20a) by the County prior to December 7, 1996. However, since the property is less than five (5) acres in size, the property's size and character appears to be consistent with the purpose and applicability of Division 6, Family Agricultural Districts (FA), and associated division standards which were adopted on December 7, 1996. The FA district is intended to be in areas designated as being within the state land use agricultural district, where public services and infrastructure are appropriate to support the very low density needs of a rural community and where a substantial number of parcels are less than five acres in size, and where a mix of uses will not conflict with or be detrimental to existing agricultural uses in the surrounding area. The subject property is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The proposed dwelling's location is identified on a plot plan dated March 11, 1997 and drawn to scale by a registered land surveyor. Copies of the plot plan dated March 11, 1997 were submitted with the subject variance application for review by the Planning Department and other government agencies.

The plot plan drawing, identifies the required 20'-0" setback and proposed 5'-0" building setback lines from the affected property lines. The proposed dwelling will be situated on the buildable portion of the property which is not affected by a large drainage easement.

6. The Department of Health (DOH) memorandum dated May 19, 1997, states:

"We have no objection to the variance application. However, minimum setback requirements for new individual wastewater systems need to be maintained."
7. The Department of Finance-Real Property Tax memorandum dated May 15, 1997, states the real property taxes for TMK: 5-2-007:007 are paid through June 30, 1997.

8. The Department of Public Works (DWS) memorandum dated June 16, 1997, states:

- "1. Building shall conform to all requirements of codes and statutes pertaining to building construction.
2. No building will be permitted within the drainage easement; we have no objections to building within the set back providing (sic) all requirements of the Building Code are complied with."

9. The following statements are extracted from the applicant's transmittal letter dated March 31, 1997:

" I am submitting this letter of explanation with my application for variance from the zoning code. My property is zoned agricultural and requires a 20 ft. building setback on all sides. Due to the recommendation from Engineers Surveyors Hawaii's Aamakao Gulch stream study my building envelope is severely restricted due to a drainage easement which covers approximately 70% of my property. This limitation keeps me from building my home within the drainage easement which is a reasonable safety issue. However, this limitation also creates a hardship for us and keeps me from building the size of house my family needs to these special and unusual circumstances which deprives me from substantial property rights that would otherwise be available.

My request for a 5 ft. setback variance on the South and East boundaries of my property is due to these building limitations which greatly and obviously interfere with the best manner of development of this property..."

Therefore, considering the foregoing facts and existing site conditions, and the applicant's statements, 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:

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Pursuant to a recent site inspection of the property, it appears the highest level buildable area within the 1.3 acre property occurs near the south eastern corner boundary pin "Found rebar". Other than minor land clearing and "grubbing" improvements to provide access and vehicle clearance within the recorded "grant of easement" on property owned by the Chalon Corporation, no evidence was found to alter or change the property's natural topography.

The applicant and current owner acknowledges and respects the location of the existing stream. The applicant would like to build a dwelling which copes with the "natural" or physical limitations of this unique property. The "high ground" or level area available within the property is severally limited. Other than the minor land clearing and "grubbing" improvements mentioned above, no evidence was found by staff of any intentions by the applicant to install any building foundations or commence any building improvements without a building permit.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant 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 are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The proposed dwelling and related building improvements will be constructed and monitored under a building permit.

Due to the location of the large drainage easement up to the northern side property line and the width of the drainage easement within the property measured from the west side property, the proposed building encroachments will impact approximately 85 and 45 feet of the affected side boundary lines. The owner intends to design and utilize a building design geometry which integrates the dwelling on the property using existing topography and employs a simple direct design methodology which occurs naturally between nature and man. The structure will be placed on the highest point of the property measured from the centerline of the stream. The proposed dwelling will not be visible from the existing belt highway or immediately visible from the existing utility and roadway easement granted by the Chalon Corporation.

The proposed building encroachments would not depreciate or detract from the character of the surrounding neighborhood of existing pastoral and urban/agricultural land use patterns.

It appears, the existing 1.3 acre non-conforming sized parcel was legally created, identified, and described by metes and bounds and tax map key records many years before the original zoning code was adopted by Hawaii County. The proposed building encroachments within two of the four designated side yards will not visually, physically or adversely affect the rights of the property owners of the large adjacent parcels. The likelihood of building construction occurring on a portion of the surrounding or that portion of a parcel (TMK: 5-2-007:004), near or along the affected common side boundary lines would be remote. Therefore, it is felt the proposed portion of the proposed farm dwelling within the minimum side yards will not detract from the character of the immediate neighborhood. Over one-third of the "living area" within the proposed dwelling's living area will be sited within the prescribed building envelope under the Zoning Code, dated December 7, 1996.

The subject variance application was deemed complete on April 24, 1997, and a written extension of time to July 31, 1997, to render a decision on the subject variance was extended to extended to July 31, 1997.

Based on the foregoing findings, this setback 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:

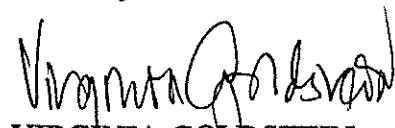
1. The applicant(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant(s)/owners have identified the subject property's boundary and have identified the location of the proposed dwelling on the site plan submitted with the variance application. A portion of the proposed dwelling will be built within the minimum side yards pursuant to the variance permit and approved site plan. 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.

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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 review under Plan Approval and 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:jkg

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xc: Real Property Tax Office