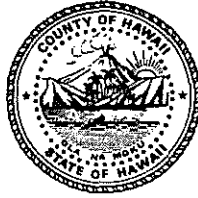


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL

P 364 320 062

July 28, 1997

Ms. Lilian Matayoshi, RA
ALA KAI REALTY
688 Kinoole Street
Hilo, HI 96720

Dear Ms. Matayoshi:

Variance Permit No. 839 (VAR 97-40)

Applicant: JANET FUJIOKA & DR. CRAIG FUJIOKA

Request: Variance From the Minimum Yards and Permitted Projections Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning, December 7, 1996

Tax Map Key: 2-4-017:036

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.839 allows the existing one story dwelling) situated on the subject property to have one front yard being minimum nine (9.0) feet in lieu of the minimum fifteen (15) foot front yard required for the subject property zoned Single-Family Residential (RS-15), Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (1), (A) and a clearspace of six (6.0) feet in lieu of a minimum ten (10) 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 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 7021 square foot parcel is zoned Single-Family Residential (RS-15) 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 permits (B Nos. 040162) by the Department of Public Works (DPW), Building Division in 1968. B No. 040162 was opened on November 27, 1968 and completed on April 2, 1969, respectively, by the DPW.
3. The site plan drawing, drawn to scale and dated April 28, 1997, by Robert S. Bright, LPLS correctly identifies and denotes minimum building setback lines and identifies the location of the existing dwelling and related site improvements on and within the subject property. The existing single story dwelling exhibits the following range of yard dimensions; 9.4 to 9.5 feet between the face of the dwelling and the respective front property lines and 6+ feet between edge of the "roof overhang" and the respective front property lines.
4. To date only (1) building permit (B No. 040162) was issued to construct and establish the existing dwelling and related building improvements situated on the subject parcel. 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. 040162 was completed or closed by the DPW, Building Division on April 2, 1969.
5. 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.

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7. The Department of Public Works memorandum dated June 24, 1997 in the variance file states:

"Under the 1991 Uniform Building Code (UBC) currently adopted by the Building Division, the minimum setback requirements for a residential dwelling (R-3 occupancy) shall not be less than three feet from the exterior wall to property line and eaves shall not be less than 2 1/2 feet from the property line."

The owner(s)/applicant(s) recently discovered and identified the existing building encroachments within a front yard. The current owners 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; or relocate the 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-sitting, redesign, and remodeling, etc. of the existing dwelling 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 twenty-seven (27) year old building encroachment problems. No evidence has been found to show indifference or premeditation by the previous owners or builder in 1968 to deliberately or intentionally allow any building encroachments to occur.

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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 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 setback irregularities. The builder or 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 the property's front yards. The building encroachments into the respective front yard are not physically, visually obtrusive from the existing private and public rights-of-way. 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 residential neighborhood, residences, public uses, and the existing and surrounding urban land patterns. It appears, the existing building encroachments established over twenty-seven (27) years ago within the affected front yards have not visually, physically or adversely affected the rights of the property owners of the adjacent residential 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 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 May 7, 1997. Pursuant to a field inspection and letter dated June 9, 1997, from the applicant's representative, an extension of time until July 31, 1997, to render a decision on the subject variance application was mutually agreed upon.

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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 approval of this variance is only from the Zoning Code minimum front yard and related open space requirements.
3. 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:jkg

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xc: Real Property Tax Office