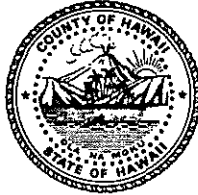


Stephen K. Yamashiro  
Mayor



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

Z 095 323 406

August 12, 1997

Mr. Robert G. Williams  
391 Kilauea Avenue  
Hilo, HI 96720

Dear Mr. Williams:

Variance Permit No. 845 (VAR 97-39)

Applicant: ROBERT G. WILLIAMS

Owner: ROBERT G. WILLIAMS

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: 1-6-037:028

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. 845 allows the existing two story Farm Dwelling situated on the subject property to have one side yard being minimum seven (7.5) feet in lieu of the minimum twenty (20) foot side yard required for the subject property zoned Agricultural (A-3a), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and clear space of four (4.0) feet in lieu of a minimum fourteen (14) feet side 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 <sup>side</sup> 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 parcel or lot, LOT 4551, containing 3.00 acres is zoned Agricultural (A-3a) by the County. The property is designated Agriculture "A" by the State Land Use Commission (LUC).
2. The existing dwelling, redwood water tank, and related site improvements was constructed under building permits (B No. 811065) issued by the Department of Public Works (DPW), Building Division in Hilo. B No. 811065 was opened on April 27, 1981, and closed on March 15, 1984, respectively, by the DPW.
3. The site plan drawing, drawn to scale, by Donald J. Murray, RPLS, identifies the dwelling's location and distance from the parcel's two side yards. The site plan accurately identifies the minimum building setback lines and location of the existing building encroachments within the affected side yards. The existing two story farm dwelling exhibits the following range of side yard dimensions; 7.88 to 16.54 feet between the face of the dwelling and the respective side property line and approximately 5+ feet between edge of the "roof eaves" and the respective side property lines.
4. To date only (1) building permit (B No. 811065) 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. 811065 was completed or closed by the DPW, Building Division on March 15, 1984.)
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 that 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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Pursuant to a letter dated June 20, 1997, submitted by the applicant's representative, only the second notice of the subject variance application was sent to the surrounding property owners within 500 feet of the subject property.

7. The Department of Public Works memorandum dated June 17, 1997, in the variance file states in part:

"Building shall conform to all requirements of code and statutes pertaining to building construction.

Our Building Department states that the Housing Code setbacks for this application are, front yard zero (0) feet, and side and rear yard five (5) feet for single story structures and ten (10) feet for two story structures."

8. The Department of Finance-Real Property Tax memorandum dated June 16, 1997, in variance file states in part:

"Property is dedicated to agricultural use."

"If this property is subdivided, deferred (rollback) taxes will be imposed."

"Real Property taxes are paid through June 30, 1997."

9. The following statements are extracted from the a submittal "VARIANCE REQUEST", attached to the variance application:

1. I bought TMK 3/1-7-37:028 in 1977 for \$5,500. The Seller would not pay for a survey, so I rented a transit and found the four corner pins. A couple of years later, I decided to build a farm dwelling. As I was building my farm dwelling at the back of the lot, I measured the setbacks based upon the locations of the back pins. I then obtained permits and performed the construction.

2. Subsequently, I purchased parcel 27 for additional horticultural and orchard plantings. I recently asked Jim Murray of Murray Smith & Associates to survey. Upon completing the survey, it was discovered that the rear corner pin on parcel 28 was incorrectly placed. My side setback is actually 7'9" at the narrowest point. This being less than the required 20', I am requesting a variance to the building codes's side yard setback requirements.

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3. Since my farm dwelling is not in the proper setbacks, I wrote to the owner of parcel 29 to see if they would be willing to cooperate with me in a Parcel Consolidation & Resubdivision where I granted them additional street frontage if they would grant me the same area the back of the lots. Their silence, as well as their previous denial to sell me parcel 29, means I have no alternative to meet the side yard setback requirement unless I tear down a substantial portion of my home. Since that is not economically feasible, my only alternative is to obtain a variance.
4. The present use for the property is agricultural with two of the three acres dedicated to orchard crops. Permission for a variance to the side yard setback of the farm dwelling would be consistent with previous County of Hawaii Planning Department decisions on other applications for setback variances. Also the variance would be consistent with the Zoning and General Plan as two of three acres are dedicated to agriculture which is the intended use for the area which would not be altered with the variance.
5. The variance would not be detrimental to the public welfare as the setback violation has existed for 16 years without anyone even noticing it. The farm dwelling is located near the rear of an 871 foot lot. Because of the high cost to build a 800 foot driveway, and extend utilities to the back of the lot, the likelihood of any building close to the location of my dwelling is remote. The variance would not be detrimental to the public welfare or cause substantial, adverse impact to the area's character as Hawaiian Acres Subdivision is scattered with non-permitted, illegal, and non-conforming structures."

The owner(s)/applicant(s) recently discovered and identified the existing building encroachments within a portion of one side 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.

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### 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, 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 or applicant, on his own volition, is honestly trying to resolve a sixteen (16) year old building encroachment problem. No evidence has been found to show indifference or premeditation by the previous owners or builder in 1977 and 1979 to deliberately or intentionally modify the existing property boundary line or dwelling location.

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 owner or applicant 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 permit issued to the applicant/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 applicant and builder felt all Zoning Code, building permit requirements and government procedures were observed and that all County building permit requirements were satisfied or met.

The building encroachments have been built within one of the property's side yards. The existing building encroachments into the respective side 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 existing dwellings built near the property or within the subdivision.

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The building encroachments do not depreciate or detract from the character of the surrounding neighborhood, existing residences, public uses, and the existing and surrounding agricultural and urban land patterns. It appears, the existing building's "footprint" and building encroachments built and established over sixteen (16) years ago within one (1) of the property's two (2) side yards have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the present location and existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments into the affected side yard were perpetuated or induced by accumulation of staking and construction errors. 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 29, 1997. Pursuant to a July 28, 1997, site inspection with the applicant and subsequent discussions with the applicant, an extension of time until August 15, 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 applicant(s)/owners have identified and acknowledged the subject dwelling's building encroachments and residential use were built and established within the side yards and open space of the subject property. A portion of the existing dwelling on the subject tax map key property established in 1984 does not comply with the minimum side yard and permitted projection 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.

Mr. Robert G. Williams

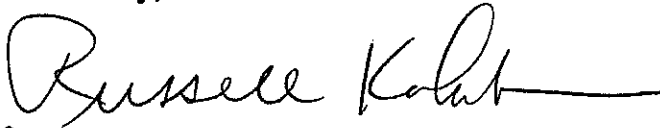
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3. The approval of this variance is only for a portion of the dwelling and eave established in 1984 which does not meet the Zoning Code minimum side yard and related permitted projections into yards and open space requirements.
4. Future building improvements 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,

  
for VIRGINIA GOLDSTEIN  
Planning Director

WRY:cjf

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xc: Real Property Tax Office  
Mr. and Mrs. Phillip Ihara  
2489-A Pali Highway  
Honolulu, Hawaii 96817