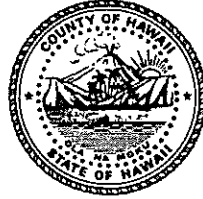


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**  
P 364 305 346

### PLANNING DEPARTMENT

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

September 23, 1997

Mr. Klaus D. Conventz  
P.O. Box 2308  
Kailua-Kona, HI 96745-2308

Dear Mr. Conventz:

Variance Permit No.853, Certified Letter dated September 3, 1997

#### **DETAILED REPORT AND CONCLUSIONS**

Applicant: JOHN J. HILLERY

Owner: JOHN J. HILLERY

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: 4-5-008:030, Lot 7-C

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The Planning Director certified the approval of your variance application (VAR 97-41) by certified letter dated September 3, 1997. Variance Permit No.853 allows "an existing duplex with a side yard setback ranging from seven feet (7) to nine feet (9) in lieu of the required ten (10) feet as required by Chapter 25, Article 5, Division 1, Section 7 and a projection into the clear space ranging from 4 to 6 feet in lieu of the 14 feet minimum required under Section 35-4-44".

#### **FINDINGS AND RECOMMENDATION**

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

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject parcel or lot, LOT 7-C, containing 11,885 square feet is zoned Single-Family Residential (RS-10) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).

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2. The existing duplex and related site improvements was permitted on the subject property or lot pursuant to OHD 91-119 and constructed under two building permits (B No. 910842 and B No. 911171) issued by the Department of Public Works (DPW), Building Division in Hilo. B No. 910842 was opened on April 11, 1991 and B No. 911171 was opened on May 24, 1991, respectively, by the DPW, Building Division. Both building permits were closed by the DPW, Building Division on August 21, 1991.
3. The site plan drawing, drawn to scale, by Richard H. Cassera, LPLS, identifies the location of the duplex on the property and distance between duplex and one of the parcel's side yards. The site plan accurately identifies the minimum building setback lines and location of the existing building encroachments within one of the affected side yards. The existing duplex exhibits the following range of side yard dimensions; 7.0 to 9.5 feet between the wall or face of the dwelling and the respective side property line and approximately 4.0 to 6.6 feet between edge of the "roof eaves" and the respective side property line.
4. To date, it appears only two (2) building permits (B No. 910842 and B No. 911171) were issued to construct and establish the existing duplex and related building improvements situated on the subject parcel or Lot 7-C. 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.
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.

7. The Department of Public Works, Building Division, 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."
8. The Department of Finance-Real Property Tax memorandum dated June 9, 1997 in variance file states in part:  
  
"Real Property taxes are paid through June 30, 1997."
9. The applicant made statements in a submittal "SPECIAL & UNUSUAL CIRCUMSTANCES", dated April 30, 1997, that was submitted for the variance application: (Please refer to applicant's statements and reasons in the subject variance file)
10. No objections were received from the surrounding property owners situated within 300 feet of the subject property.

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, the Planning Director has concluded that 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, and other similar design alternatives, etc. The removal of the

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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.

No evidence has been found to show indifference or premeditation by the previous owners or builders to deliberately or intentionally modify the existing property boundary line or the existing building's location.

The Planning Director 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 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 or, visually obtrusive from the existing private and public rights-of-way. The existing building's design and related site improvements are similar to other existing dwellings built near the property or within the subdivision. 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. Therefore, the Planning Director finds the present dwelling's location and existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision.

Based on the foregoing findings, the Planning Director has determined that the approved 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


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materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

WRY:RSK:pak  
F:\WP60\WRY\FORMLETT\VARNO853.

xc: Real Property Tax Office  
Mr. Clint Williams  
OHD 91-119