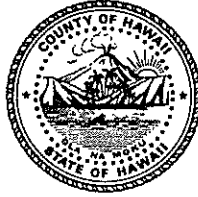


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Russell Kokubun  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

**CERTIFIED MAIL**  
**P 364 305 200**

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

September 18, 1997

Mr. Peter Double  
SANTA MARIA, INC.  
322 Vista Del Mar  
Redondo Beach, CA 90277

Dear Mr. Double:

Variance Permit No. 856 (VAR 97-44)  
Applicant: SANTA MARIA, INC.  
Owner: SANTA MARIA, INC.  
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: 4-8-004:016

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. 97-44 allows the existing three story farm dwelling situated on the subject property to have a rear yard being minimum sixteen feet (16'-0") in lieu of the minimum twenty-five (25) foot rear yard required for the subject property zoned Agricultural (A-40a), Article 5, Division 7, Section 25-5-77 and 25-5-67, and respective clearspace requirements 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:

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject parcel, Lot 5, containing 0.912 acre or approximately 39,727 square feet, is mauka of the "Waipio Valley Lookout Site" and near the

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0.9186

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terminus of the Honokaa-Waipio Road. The property is zoned Agricultural (A-40a) by the County. The property is designated Agriculture "A" by the State Land Use Commission (LUC).

2. The existing permitted dwelling is being constructed under building permit (B No. 930894) and issued to Santa Maria Inc. by the Department of Public Works (DPW), Building Division in Hilo. B No. 930894 was opened on May 17, 1993 and is still active and not been closed by the DPW, Building Division. Subsequent to the issuance of B No. 930894 to construct the dwelling, a second building permit (B No. 951267) to construct a greenhouse on the subject property was issued to Santa Maria, Inc. by DPW, Building Division in Hilo. B No. 951267 was opened on August 21, 1995, and closed on September 23, 1996, by the DPW, Building Division.
3. The site plan drawing, drawn to scale, submitted with the variance application, identifies the dwelling's location and distance from all property lines. The location of the greenhouse built under B No. 951267 is not shown or identified on the site plan drawing submitted with the variance application.
4. Subsequent to the issuance of the building permit to construct the dwelling, the electrical permit (E940731) and plumbing permit (M931217) were obtained from the DPW, Building Division.
5. It appears the original and subsequent site and building construction plans submitted with two (2) 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 permit to construct and establish the existing dwelling on the property were approved by the Planning Department and endorsed by other government agencies.
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.

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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 July 17, 1997, in variance file states in part:

"Real Property taxes are paid through December 31, 1997."

9. The following verbatim statements are from the applicant's reason(s) "PETITION FOR VARIANCE" and attached to the variance application:

"5a. The special or unusual circumstances or conditions applying to the land or building for which variance is sought.

Santamaria Inc. applied as owner/builder for a building permit for a 3 story, 1250 square foot residence on the above lot in May of 1994. At this time the county planning department determined that the subject lot had not "road frontage" because it is accessed via an easement across 4 other parcels between the Waipio Road and the lot in question. Lots with no "road frontage" are deemed to be all sides with no front or rear setback requirement and therefore a setback requirement of 15 was applied to all sides including the rear side and the mauka side which the home is built adjacent to.

During the course of construction the second floor was made 1 foot wider than originally permitted; a bathroom was added to the third floor and the third floor access stairs were enclosed inside rather than left outside as originally permitted. Please note that the first floor and the slab concrete foundation was not changed from the original permit and that the location or footprint of the house was never changed- only the second & third floors were modified, both of which are smaller than the first floor dimensions. In order to get final inspection and certificate of occupancy a second permit was applied for showing the changes and additions in October 1996. At this time the planning department informed Santamaria Inc. that their determination of the front and rear setbacks was now different because they considered a "paper road" on the Waipio or West side of the lot to be the "front" of the lot and therefore would require a 25 foot setback at the rear of the lot

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regardless of the fact that the home was already built with a 15 foot setback as required under the original permit. Neither the applicant or the County Building department has a copy of the original permit site plan.

- 5b. The circumstances or conditions that deprive the owner of the reasonable use of the building by strict application of the provision?

We cannot move a 3 story concrete slab foundation house.

- 5c. How the granting of the variance is necessary for the reasonable use of the building?

A grading permit violation settlement issued by the county in June of 1988 required that all construction take place in a net buildable area as defined on the attached map. This is a County of Hawaii imposed requirement which the owner is in compliance with but which the planning seems unable to process or deal with as it was required by another department (engineering). The home is on the correct and safest location on the lot and alteration to the second and third floors should be allowed.

- 5d. The effects if any the variance will have on other persons or property?  
There are no negative effects to other persons or property. There is only one residential neighbor to the makai side. This structure is located approximately 250 feet from their lot line and 400 feet from their residence. The 10 feet in question is not in that direction and does not make the home any closer. The surrounding lot is 4,000 acre parcel owned by Bishop Estate and undevelopable in this location.

- 5e. Facts indication that the proposed variance is consistent with the intent and purpose of the applicable chapter of the code. We find the determination of setback based on a road that does not now and never will exist regrettable. The setback as previously determined and also required in the grading violation settlement is within the intent & purpose of the Zoning Code.

For these reasons, we respectfully ask for a variance to the planning department's interpretation of this portion of the Code."

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10. No objections to the variance application were received from the surrounding property owners.

The present owner(s)/applicant(s) submitted a site plan which identifies the location of an existing dwelling and distance and identifies the distances between the wall of the dwelling from all property boundary lines. It appears the original and approved site plan submitted with the building application stipulated that the subject property was subject to only the minimum side yards or the proposed dwelling was required to be setback a minimum of fifteen feet (15'-0") from all boundary lines and a minimum ten feet (10'-0") clearspace between the roof eaves and the affected property lines would be permitted. Subsequent to the issuance of the original building permit, the current owner or applicant learned of the existing dwelling's encroachments into a "rear yard" after recognition of a paper road was verified and recognized by numerous government agencies. It appears the recognition of a "paper road" redefined the minimum building yards pursuant to the Zoning Code.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building 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, 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 recent encroachment problem. No evidence has been found to show indifference or premeditation by the previous owners or builder 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

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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 original building permit 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 being satisfied and met.

The building encroachments have been built within the property's rear yard. The existing building encroachments into the respective rear 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 unique and 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 conservation land patterns. It appears, the existing building's "footprint" and building encroachments built and established recently within the property's rear yard 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 rear yard were created and induced by a cumulation of mapping discrepancies and interpretation of the minimum yards by the Planning Department and other government agencies. The bulk or remaining portion of the "living area" within the existing three story dwelling on the property complies with the minimum yards of the Zoning Code, dated December 7, 1996.

The subject variance application was deemed complete on June 10, 1997. Pursuant to a July 28, 1997, site inspection with the applicant and subsequent discussions with the applicant, an extension of time until September 22, 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

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the County General Plan. Furthermore, the variance request 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 rear yards and open space of the subject property. A portion of the existing dwelling on the subject tax map key property established in 1993 does not comply with the minimum rear 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.
3. The approval of this variance is only for the portion of the dwelling and eave being built under B. No. 930894 and established within the property's rear yard which does not meet Chapter 25, the Zoning Code's, minimum rear yard and related permitted projections into yards and open space requirements. The owners, applicant, or authorized representative shall contact the DPW, Building Division to address and close the existing building permit (B No. 930894).
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.

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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:pak

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xc: Real Property Tax Office  
Mr. David Richardson  
PO Box 2746  
Kamuela, Hawaii 96743