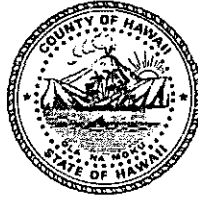


Stephen K. Yamashiro
Mayor



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) 961-8742

CERTIFIED MAIL

Z 179 517 493

March 10, 1998

Mr. Gilbert Iwashita
2499 Nohona Street
Hilo, HI 96720

Dear Mr. Iwashita:

Variance Permit No.899 (VAR 97-79)

Applicant: GILBERT IWASHITA

Owner: GILBERT IWASHITA

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

Tax Map Key: 2-2-045:131, Lot 4

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow a portion of a dwelling and attached garage constructed on the property within the minimum 20 foot front yard of the subject property. The dwelling is allowed to remain on the subject property with a 9.35 feet front yard in lieu of the minimum 20 feet front yard required by Article 5, Division 1, Section 25-5-7, (a), (2), (A), Minimum yards and with clearspace of 7.35 feet in lieu of the minimum 14 feet open space requirement, pursuant to Section 25-4-44 (a), (1), Permitted Projections Into Yards and Open Spaces.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future variance applications. Your patience is appreciated.

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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 property, TMK: (3) 2-2-045:131, contains 10,902 square feet and is Lot 4, Being a Portion of Lot 18, Block 701, Grant 9743, Waiakea Homesteads, Waiakea, South Hilo, Hawaii. The property is zoned Single-Family Residential (RS-10) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).
2. The original dwelling and related site improvements were built and constructed under building permit BP No. 72778 which was opened on December 2, 1977, and closed on December 19, 1984, by the Department of Public Works (DPW), Building Division in Hilo. A second building permit BP No. 971294 to convert the existing carport to garage was opened on October 9, 1997 and closed on October 27, 1997, by the DPW.
3. The site plan drawing, dated October 10, 1997 and drawn to scale, identifies the location of the existing dwelling and building and roof eave encroachments within the front yard of the subject TMK property and accurately denotes the distance between the "building setback" lines and the existing dwelling and roof eave. As such, the existing dwelling/garage encroaches by 10.65 feet into the minimum 20 feet front yard and by 6.65 feet into the minimum 14 feet open space requirements.
4. When approved by the Planning Department, the plans would have shown that all minimum building yards or setbacks were going to be adhered to for the proposed building improvements.
5. At the time the building permits were approved, the owners received all necessary DPW approvals for the original dwelling and building addition.
6. It has been over 14 years since the original construction of the dwelling was approved by the DPW, and the current owners are trying to resolve a situation which they had no control over and have honestly prepared a certified survey to address and disclose the location of all building encroachments.

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7. The Department of Finance-Real Property Tax memorandum dated November 7, 1997, in the variance file states:

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

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

Therefore, considering the foregoing facts the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner 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

1. The applicants on their own volition are honestly trying to resolve this long standing encroachment problem which was not created by them. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the building and roof eave encroachments to occur.
2. Any architectural alterations or design changes to the existing dwelling to conform with the minimum building yards and open space requirements would create undue and excessive hardship for the applicants when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands being placed on the applicants when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. Portions of the existing dwelling encroach by as much as 10.65 feet into the required 20 feet front yard and by 6.65 feet into the minimum 14 feet clearspace requirements. These encroachments into the front yard and open space will not diminish the ability for adequate light and air to circulate and will still allow adequate open space. Therefore, while the Zoning Code requires a minimum 20 feet front yard and 14 feet open space for this parcel, in this particular case, the

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building encroachments are relatively minor and will not visually or physically impact the surrounding properties with the granting of this variance. The remaining portion of the existing dwelling complies with the minimum yard and open space requirements stipulated by the Zoning Code.

There were no objections from any surrounding property owners to the proposed variance request.

The subject variance application was deemed complete on October 15, 1997.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and 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 owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner, 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 and construction of the existing dwelling and garage.
3. The approval of this variance is only for the existing building improvements established within the minimum front yard shown on site plan dated October 10, 1997 submitted with the variance application. Any future building additions to the affected portion of the dwelling and attached garage within the minimum front yard shall be subject to review under Plan Approval or comply with all requirements of the Zoning Code.
4. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance, March 10, 1998.

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5. Future building improvements and permitted uses on the subject property 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

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xc: Real Property Tax Office
Mr. Craig Shigeoka, RA