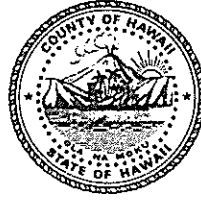


Stephen K. Yamashiro
Mayor



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 179 517 257

March 30, 1998

Mr. Ernest Medeiros, Representative
688 Kinoole Street, Suite No. 102
Hilo, HI 96720

Dear Mr. Medeiros:

Variance Permit No. 911 (VAR 98-008)

Applicant: JENNY KUWAYE, ET AL.

Owner: ALSTON & LESLEE KIMURA

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: 2-5-041:087

After reviewing your variance application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow the retention of the existing dwelling with a side yard of 6.63 feet in lieu of the minimum 8 feet side yard pursuant to Section 25-5-76, Minimum yards, (a), and clearspace of 3.57 feet in lieu of the minimum 4 feet open space requirement pursuant to Section 25-4-44, Permitted Projections Into Yards and Open Spaces.

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:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel, "LOT 16", containing 7500 square feet, is part of Block 8 of the Kaumana City Subdivision, Ponahawai, South Hilo, Hawaii. The property is identified by TMK: 2-5-041:087 and is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
2. The original dwelling and related site improvements were constructed under Building Permit B No.920109 which was opened on January 14, 1992 and closed on September 8, 1992 by the Department of Public Works (DPW), Building Division in Hilo. A second Building Permit B No. 930794 for a family room and deck addition to the dwelling was opened on May 3, 1993. To date the second building permit is still active.
3. The survey map dated November 5, 1997, drawn to scale, accurately identifies the location of the existing "ONE-STORY RESIDENCE" with an 6.63 feet side yard in lieu of the minimum 8 feet side yard requirement. The site plan in the variance file denotes the 3.75 feet distance between a portion of the existing roof eave and the affected side property line in lieu of the minimum 4 feet open space requirement.
4. The required building inspections by the effected government agencies of the new dwelling and related site improvements occurred during the processing of the original and second building permits.
5. The existing building encroachments within the affected side yard went undetected by government agencies and the public for over 5 years.
6. The Department of Finance-Real Property Tax memorandum dated February 25, 1998 states:

"The subject property is being assessed at fair market value."

"Real Property taxes are paid through June 30, 1998."

7. The Department of Public Works (DPW), memorandum dated February 25, 1998 states:
 - "1. Building shall conform to all requirements of code and statutes pertaining to building construction.
 2. Minimum setbacks shall be maintained for residential Structures; 3-ft. side & rear, 2-ft. minimum for projections.
 3. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code."
8. The State Department of Health, memorandum dated March 30, 1998 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
9. 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 deprives the owner or applicant 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 owners on their own volition are honestly trying to resolve this existing encroachment problem. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.
2. Any architectural alterations or design changes to the dwelling to conform with the minimum side yard and open space setbacks would create undue and excessive hardships for the applicants when other more reasonable options are available.

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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.

The Planning Department acknowledges there may be other design or building alternatives available to the owner than those 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 is to assure that adequate air and light circulation is available between permitted structures and property lines. The existing dwelling and related building improvements were constructed under a valid building permit issued to the previous owners. Building inspections of the premises, during building construction and throughout the life of the original and second building permit in 1992 and 1993, did not disclose any building setback irregularities. The owners felt all Zoning Code and building permit requirements had been satisfied and met. It appears the existing building encroachment within the affected side yard was created and induced by a cumulation of construction or boundary discrepancies and misinterpretation of the minimum building yards during construction of the original dwelling. Inspection of the property by the DPW regarding the building permits issued in 1992 and pending since 1993 did not uncover or disclose any encroachment into any minimum building yards or other building setback problems.

The subject variance application was deemed complete by certified letter on February 2, 1998.

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 owner, assigns or successors shall be responsible for complying with all stated conditions of approval.

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2. The owner, assigns or successors shall contact the Department of Public Works, Building Division and close B No. 930794 prior to conveyance of the subject property.
3. 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 30, 1998.
4. The owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the 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 building permits.
5. 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

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xc: Real Property Tax Office