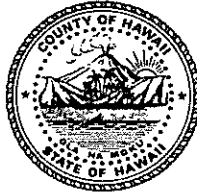


Stephen K. Yamashiro
Mayor



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 095 324 052

July 14, 1998

Ms. Janice H. Yamada, R, G.R.I.
Jan & Associates
74-5565 Luhia Street
Kailua-Kona, HI 96740

Dear Ms. Yamada:

Variance Permit No.936 (VAR 98-38)
Applicant: JANICE H. YAMADA
Owners: JERRY G. KAWAGOE, ET AL.
Request: Variance From Minimum Yards, and Permitted Projections Into Yards
and Open Spaces, Pursuant to Chapter 25, of the Hawaii County Zoning Code
Tax Map Key: 2-4-007:079

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to: 1) allow a portion of the existing dwelling to remain within the affected rear yard of 23.7 feet in lieu of the required minimum 30 feet rear yard; 2) allow open space of 19.2 feet in lieu of the required minimum 24 feet; 3) allow a portion of the existing workshop to remain within the affected side yard of 5.4 feet in lieu of the respective minimum twenty (20) feet side yard; and 4) allow open space of 0.9 feet in lieu of the minimum 14 feet open space requirements as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards and Article 2, Division 4, Section 25-4-44, Permitted Projections Into Yards and Open Spaces, respectively.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow a portion of the existing dwelling and workshop to remain within the affected minimum rear and side yards and associated open spaces should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property containing 4.14 acres is a Portion of Grant 11735, Waiakea Homesteads, 2nd Series, Situated at Waiakea, South Hilo, Hawaii, and is zoned Agricultural (A-3a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
2. The subject property's address is 1931 Ainaola Drive. The original dwelling and related site improvements were constructed under Building Permit B No.781775 issued to Dominador L. Coloma which was opened on July 6, 1978, and issued by the Department of Public Works (DPW). Pursuant to a note on a copy of the original building permit obtained from the DPW, the building improvements were sold to "TEX TAYLOR-NEW OWNER" and subject to final conditions. Furthermore, it appears the location and construction of the existing workshop occurred in 1978. To date, B No. 781775 has not been closed. Subsequently, a second building permit, B No. 881591, to construct a bedroom, bath, and deck to the dwelling constructed under B No 781775 was issued to Mr. and Mrs. Richard Lane by the DPW. B No. 781775 was opened on August 22, 1988, and closed on April 29, 1998, by the DPW. The building improvements constructed on the property are being sold "AS BUILT". The building encroachments within the affected rear and affected side yards were discovered after a modern survey of the property was performed in 1998.
3. The revised survey map dated May 18, 1998, drawn to scale, accurately identifies the location of the existing dwelling, workshop, and other related site improvements.
4. The driveway entry location, original dwelling, and workshop buildings were built by pervious owners under a building permits issued in 1978 and 1988. The required building inspections by the affected government agencies of the original dwelling and other building or site improvements occurred during the processing of the original and second building permits. The existing building encroachments within the affected side and rear yard went undetected by government agencies and the public for nearly 20 years.
5. Pursuant to tax and building permit records, the original dwelling and workshop were both constructed in 1978 by the previous owners prior to acquisition of the property by the current owners. The present owners acquired the property unaware of the existing building encroachments.

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6. The Department of Public Works memorandum dated June 17, 1998, states in part:

We have reviewed the subject application and our comments are as follows:

- "1. Building shall conform to all requirements of code and statutes pertaining to building construction. Minimum setbacks for residential structures are 3-ft. side and 3-ft. rear. Minimum setbacks for commercial structures are 5-ft. side and 5-ft. rear. Minimum clear distance from property lines to the eave shall be 2-ft. The existing projections do not meet these minimum setback requirements and shall be corrected.
2. Subject property is within or affected by Flood Zone "A" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Any new construction or substantial improvements will be subject to the requirements of Chapter 27-Flood Control of the Hawaii County Code.

Proof of construction for all structures, before May 1982, shall be provided. Otherwise, the owner shall bring post May 1982 structures into compliance with Chapter 27."

7. The Department of Health memorandum dated June 10, 1998, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

8. The Department of Finance-Real Property Tax memorandum dated June 6, 1998, states in part:

"Property is receiving agricultural use value"

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

9. No objections to the variance application were received by the Planning Department.

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The applicant submitted a modern survey map, drawn to scale, which identifies the location of the existing dwelling and workshop built on the subject property. The site plan identifies and denotes the distances between the dwelling and workshop wall and from the affected rear and side yard and the distances between the affected eaves and the affected property lines.

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 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 the existing building encroachment problem. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachment to occur.
2. Any architectural alterations or design changes to the dwelling or workshop to conform with the minimum rear and affected side yard and open space setbacks would create undue and excessive hardships for the applicant and owners when other more reasonable options are available.

The Planning Department acknowledges there may be other design or building alternatives available to the owners 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 owners 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. It appears the original dwelling and workshop were designed for the needs of the original owners and constructed under a valid building permit issued to the previous owners in 1978. Building inspections of the premises, during building construction and throughout the life of the original and second building permit in 1978 and 1988, respectively, did not disclose any building setback irregularities. The original and subsequent owners prior to 1989 felt all Zoning Code and building permit requirements had been satisfied and met.

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3. The previous or current owners, applicant or authorized representative shall contact the DPW, Building Division to address and close the original building permit, B No. 781775 originally issued to Dominador L. Coloma. Subsequent to the closing of B No. 781775, the owners, applicant or authorized representative shall submit an affidavit or final status report, in writing to Planning Director, Planning Department, 25 Aupuni Street, Hilo, Hawaii, 96720 for the record.
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, July 14, 1998.
5. Any future building improvements to the dwelling and to the existing workshop on the subject property shall be subject to State statutes, the County Zoning Code and ordinances and regulations pertaining to building construction, use, and building occupancy.
6. The requirements under Chapter 27, Hawaii County Code (HCC), shall be complied with.

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/VKG/RK:cjf

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xc: Real Property Tax Office