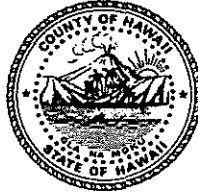


Stephen K. Yamashiro
Mayor



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 179 517 289

August 13, 1998

Mr. Sidney M. Fuke
100 Pauahi Street, Suite No. 212
Hilo, HI 96720

Dear Mr. Fuke:

Variance Permit No. 943 (VAR 98-40)

Applicant: INGRID CARVALHO

Owners: INGRID F. CARVALHO, ET AL.

Request: For the Existing Dwelling (Reconstructed Billet) only: 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: 1-9-007:019

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow a portion of an existing dwelling to remain within the affected rear yard of 8 ft. in lieu of the minimum 25 ft. rear yard and open space of 6 feet in lieu of the minimum 19 ft. and to allow a portion of the existing dwelling to remain within the affected side yard of a 10 ft. in lieu of the minimum 15 ft. side yard and open space of 5 ft. in lieu of the minimum 10 ft. open space requirement as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (3), and Article 4, 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 within the required 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 3.00 acres is a Grant 10099, Block K , Oloo Summer Lots, situated at Oloo, Hawaii. The property is zoned Single-Family Residential (RS-20) by the County and designated Urban "U" by the State Land Use Commission (LUC).
2. Pursuant to the applicant's background report, the existing building improvements shown and identified on the site plan submitted were constructed and established on the property in 1989. Pursuant to a recent site inspection by Planning Department staff, a steel water tank , pump, utility poles, fence, driveway location, and other landscaping improvements were not described or identified on the site plan received. Furthermore, it appears that the steel water tank may be within the minimum (15'-0" wide) side yard. Therefore, the steel water tank's establishment, location and any other encroachment into the affected minimum building yard should be addressed in a timely fashion.
3. The site plan, drawn to scale, submitted with the variance application identifies the location of the two (2) existing dwellings, cesspool location, two (2) water tanks, and tool shed on the property.
4. Pursuant to a recent site inspection of the property, there is an existing perimeter fence and driveway from Laukapu Street. It appears there is a single Hawaii Electric Light Company (HELCO) electric meter located on the wall of the main dwelling.
5. Pursuant to a recent site inspection of the neighborhood, it appears that portions of the existing dwelling were established within the minimum yards before the Zoning Code was adopted in 1967. It appears the size of the adjacent parcels and overall character of this neighborhood has not significantly changed during the last 40 years. There are many native and exotic varieties of shrubs and trees planted within the property and along the Laukapu Road right-of-way. The width of the pavement within the Laukapu Road right-of-way varies between 9 to 12 feet +/-.
6. The Department of Public Works memorandum dated May 29, 1998, states in part:

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

The minimum setbacks for residential structures shall be 3-ft. side and rear.

The exterior wall or projections less than (sic) 3-ft. from the property line shall be constructed to provide a 1-hr, fire resistive occupancy separation."

7. The Department of Health memorandum dated June 23, 1998, states:

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

8. The memorandum from the Department of Finance-Real Property Tax Office dated July 9, 1998, for 1-9-007-017 states in part:

"There are no rollback taxes. It would be helpful in any approval that is given by the Planning Dept. to make it conditional of the building being re-surveyed by the Real Property Tax Office in order to update the public records.

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

9. The Planning Department received one (1) phone call and (2) objection letters from the surrounding property owners. Concerns and objections cited in the timely letter received from the surrounding property owner were addressed by the applicant's authorized representative, Mr. Sidney M. Fuke or by department staff during the review of the subject variance by the Planning Department.

The specific concerns and allegations received from the surrounding property owners were carefully weighed and considered pursuant to the Zoning Code. To date, the applicant's representative has reviewed all timely objection letters received. Additional time was afforded to Mr. Fuke until August 7, 1998, to consider and understand the location of any other structures not identified or denoted on the subject property.

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Pursuant to previous Planning Department site inspections of the property and recent discussions with Mr. Fuke concerning the pictures of the property submitted with the variance application, it is understood that the proposed dwelling appears to be situated on the foundation of a reconstructed billet. The current owners and applicant understand the property was zoned single-family residential (RS) and is aware that all existing structures were constructed or established on the property in 1989.

The present owners submitted a copy of a recent site or plot plan, drawn to scale, which identifies the location of the affected dwelling unit which was constructed within the minimum building yards. The site plan identifies and denotes the distances between the wall and eave of the proposed dwelling from the rear and affected side yards and the distances between the dwelling roof eave and the remaining property lines. For the record the existing steel water tank situated on the subject property, existing utility poles, driveways, and landscaping materials and improvements were not identified or denoted on the site plan submitted with the variance application.

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

There are no reasonable alternatives in resolving the difficulty of the owner. Alternatives available to the owner include removing or reconstructing the existing dwelling within the buildable area prescribed by the Zoning Code. The existing building's proportion and shape is architecturally compatible and similar to the existing main dwelling and other dwellings within the immediate neighborhood.

The Planning Department acknowledges there may be design or building alternatives available to the owner other 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 when a more reasonable alternative is available by the granting of the subject variance request.

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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 proposed setback variances will not hinder adequate light and air circulation around the proposed dwelling. In view of similar dwelling combinations within the immediate neighborhood, the existing dwelling will not depreciate or detract from the character of the property or surrounding neighborhood. It appears the existing dwelling's location has not visually or physically adversely affect the rights of the property owners of the adjacent or surrounding properties since acquisition of the property by the current owners in 1989. Therefore, it is felt the affected portion of the existing affected dwelling within the rear and affected side yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was deemed complete on June 5, 1998, and was acknowledged by Certified Letter June 19, 1998. However, due to the number of telephone inquiries and objection letters received, and the comments from the Real Property Tax Office, additional time was required by the Planning Department and other agencies to understand and respond to the variance application. Furthermore, the recent site inspection indicates the site plan submitted with the variance application does not indicate the location of an existing steel tank and other related site improvements on the property which will be addressed later. Therefore, pursuant to previous discussions with the owner's representative and letter dated August 3, 1998, an extension of time was granted until August 14, 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. The effective date of this permit is August 13, 1998.
2. The approval of this variance pertains only to the affected dwelling denoted on the site plan as built on a reconstructed billet which according to the 1946 tax

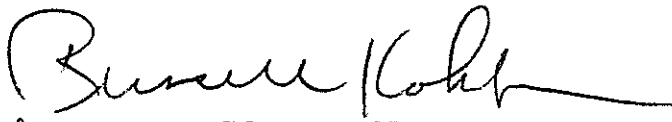
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records existed on the property. The variance for the foregoing dwelling is from the Zoning Code and does not address or include the location of the existing steel water tank and other related building improvements not denoted on the site plan submitted with variance application. The owner, successors or assigns shall demolish or relocate the steel water tank to comply with the minimum yards and 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 owner or 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 nature of the variance request and location of the existing dwelling on the property will not meet the provision of the Zoning Code regarding minimum yards and corresponding permitted projections into yards and open spaces. The approval of this variance is from the Zoning Code only and allows the affected dwelling to be remain on and within the subject property pursuant to the site plan submitted with variance application and/shall meet current DPW building code requirements including approval of all necessary building permits.
4. 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
Planning Commission