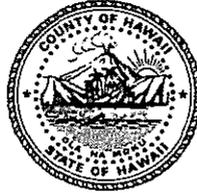


Stephen K. Yamashiro  
Mayor



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 095 324 280

December 1, 1998

Mr. and Mrs. Leonard Tanaka  
1259 Haihai Street  
Hilo, HI 96720

Dear Mr. and Mrs. Tanaka:

Variance Permit No. 974 (VAR 98-69)

Applicants: LEONARD TANAKA, ET AL.

Owners: LEONARD TANAKA, 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: 2-4-061:004

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After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to permit a proposed subdivision of the existing property into two (2) lots, being LOT G-1 and LOT G-2, and allow portions of two existing dwellings to remain "As Built", with respective side yards of 5 feet in lieu of the minimum required 8 feet from the proposed new side property line and with 2 feet open yards between the edge of portions of the existing roof eaves and the proposed new side property line in lieu of the minimum required 4 feet as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a), (1), (B) 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 portions of the existing dwellings to remain within the proposed minimum 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 20,000 square feet is Lot G, Being a Portion of Grant 11,265, Land Situated at Waiakea, South Hilo, Hawaii. The property's address is 1700 and 1704 Mauna Kai Street.
2. The property is zoned Single-Family Residential (RS-7.5) and designated Urban "U" by the State Land Use Commission (LUC).

Pursuant to the applicant's background report, the existing dwellings on the property were legally permitted in 1991 and met all building yards under the County's Zoning and County Building Code requirements. The applicants recently rezoned the property from RS-15 to RS-7.5 in 1998. Ordinance No. 98 79, amending the County Zoning Code, became effective on July 24, 1998 subject to conditions A thru I, inclusive. Ordinance No. 98 79, Condition B, states in part the following: "Final Subdivision Approval of the proposed subdivision development shall be secured within five (5) years from the effective date of this ordinance."

3. The site plan, drawn to scale, submitted with the variance application identifies the location of the two (2) existing dwellings, cesspool location, driveways and proposed property lines.
4. Pursuant to a recent site inspection of the property, there is an existing CRM perimeter wall along the existing front property line of Haihai and Mauna Kai Streets.
5. The existing dwellings were issued building permits ( B No. 911429 and B No. 91158) by the Department of Public Works (DPW), Building Division in 1991. The dwelling permits were closed on January 10, 1992 by the DPW. It appears the minimum building yards were and associated open space requirements were met in 1992 before the property was rezoned in 1998.
6. The Department of Public Works (DPW) memorandum dated October 21, 1998, states in part:

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

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Department).

Mr. and Mrs. Leonard Tanaka  
Page 3  
December 1, 1998

2. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code. This includes offset and setback distances, which the proposed layout may not be in conformance."

"The attached DPW Building Division memorandum dated October 21, 1998, states in part:

"Approval of the application shall be conditioned on the comments as noted below.

The projections do not meet setback requirements and should be corrected.

The exterior wall or projections shall be constructed to provide a one-hour fire resistive occupancy separation.

Others: A building permit is required for alterations.

7. The memorandum from the Department of Finance-Real Property Tax Office dated October 19, 1998, for 2-4-061-004 states in part:

"Real Property taxes are paid through December 31, 1998."

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

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

9. No objections were received from the surrounding property owners or public.

The present owners submitted a copy of a recent site or plot plan, drawn to scale, which identifies the location of the affected dwellings from the proposed interior lot line. The site plan identifies and denotes the distances between the walls of the proposed dwellings from the proposed common side property line and the distances between the existing dwelling's wall and proposed lot line.

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

Mr. and Mrs. Leonard Tanaka

Page 4

December 1, 1998

with the best use or manner of development of the subject property.

### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owners. Alternatives available to the owner include removing or reconstructing the existing dwellings within the buildable area prescribed by the Zoning Code. Modifications to the dwellings will affect the existing driveway locations and existing landscaping and site improvements. The dwellings are not aligned along the same axis and exhibit a proportion and shape which is architecturally compatible and similar to 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.

### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is maintained between permitted structure(s) and property lines. The proposed setback variances will not hinder adequate light and air circulation around the existing structures. In view of similar dwelling combinations within the immediate neighborhood, the existing dwellings will not depreciate or detract from the character of the property or the surrounding neighborhood. It appears the existing dwellings have not visually or physically adversely affected the rights of the property owners of the adjacent or surrounding properties since development of the property by the current owners in 1991. Therefore, it is felt that the affected portions of the existing dwellings within the proposed side building yards and associated open spaces will not detract from the character of the immediate neighborhood or the proposed subdivision.

The subject variance application was deemed complete on October 9, 1998, and was acknowledged by Certified Letter dated October 15, 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:

Mr. and Mrs. Leonard Tanaka

Page 5

December 1, 1998

1. The owner, assigns or successors shall be responsible for complying with all the conditions of Ordinance No. 98 79, SUB 98-69 and this variance approval. The effective date of this variance permit is December 1, 1998.
2. The approval of this variance pertains only to the existing dwelling improvements built in 1991 and denoted on the variance application site plan and the preliminary subdivision plat map, dated March 18, 1998, respectively. The 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 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 dwellings on the property will not meet the provision of the Zoning Code regarding minimum side 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 dwellings 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.
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

WRY/RK:gp

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Mr. and Mrs. Leonard Tanaka  
Page 6  
December 1, 1998

xc: Real Property Tax Office  
SUB 98-106  
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