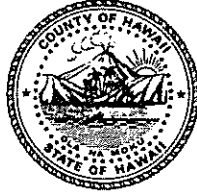


Stephen K. Yamashiro
Mayor



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

P 101 317 852

July 14, 1999

Mr. Keith T. Iwamoto, RA
CENTURY 21 HOMEFINDERS OF HAWAII
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Iwamoto:

VARIANCE PERMIT NO. 1031 (VAR 99-051)

Applicant: KEITH T. IWAMOTO

Owner: ROGER M. SHIROTA

Request: Variance From the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,
Ratified April 6, 1999

Tax Map Key: 1-1-008:102, Lot 514

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1031 allows portions of an existing dwelling to remain within the affected side yard and open space "AS BUILT" in lieu of the minimum side yard of 20 feet and minimum open space of 14 feet as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a), (3), (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 from the minimum side yard and open space requirements should be approved based on the following findings:

006033

JUL 16 1999

Mr. Keith T. Iwamoto, RA
CENTURY 21 HOMEFINDERS OF HAWAII
Page 2
July 14, 1999

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 20,000 square feet is Lot 514, Mauna Loa Estates Subdivision, located at Keaau, Puna, Hawaii. The property's address is 11-3876 Sixth Street. The property is zoned Single-Family Residential (RS-20) by the County.
2. The existing building improvements were constructed under two (2) building permits (B No.931132 and B No. 932138) issued by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the site plans attached to the detailed building construction plans for the original dwelling, patio addition, and water tank were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements on the property. B No. 931132 and B No. 932138 were closed by the DPW on November 22, 1993.
4. The site plan drawing, drawn to scale and dated April 24, 1999, by the Independent Hawaii Surveyors, identifies the existing dwelling and water tank and building setbacks on the subject property. The location of the dwelling and roof encroachments, intruding 1.07 feet and 0.44 feet respectively, are identified within the affected side yard. Furthermore, the location and distances between the building encroachments and the affected side boundary line are identified and denoted.
5. The applicant's transmittal letter dated May 21, 1999, states in part:

"Under item #1 of the "application for variance", we feel that the special and unusual circumstances that may deprive the owner of substantial property rights is that the property is currently in escrow with the Buyer trying to purchase the property under a conventional Loan. The Lender and the Buyer will not allow the sale to go through unless the encumbrance or encroachment into the setback is resolved. Unless it is addressed, the owner will be deprived of the sale.

Under item #2, there are no other reasonable alternatives available. The dwelling is built on a concrete slab, therefore the cost factor will be very high to move the building.

Mr. Keith T. Iwamoto, RA
CENTURY 21 HOMEFINDERS OF HAWAII
Page 3
July 14, 1999

Under item #3, we do not feel the variance would cause substantial or adverse impact to the public or the area's character, as the encroachment into the setback is only a few feet."

6. The Department of Finance-Real Property Tax memorandum dated June 10, 1999, in the variance file states in part:

"There are no comments at this time

Current Real Property taxes are paid through June 30, 1999."

7. The State Department of Health (DOH) memorandum dated June 14, 1999, in the subject variance file states:

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

8. The Department of Public Works (DPW) memorandum dated June 10, 1999, states in part:

"We have reviewed the subject application and have no comments to offer."

9. The applicant submitted proof of service to serve first and second notice of the application on the designated and surrounding property owners. The first notice was mailed on May 21, 1999, and the second notice was mailed on June 10, 1999. No objections to the variance application were received from the surrounding property owners.

The applicant and owner submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the dwelling encroachments and the affected side boundary line. Portions of the existing dwelling and roof eave were constructed within one of the property's two side yards.

Therefore, considering the foregoing facts, 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.

Mr. Keith T. Iwamoto, RA
CENTURY 21 HOMEFINDERS OF HAWAII
Page 4
July 14, 1999

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant /owner. Alternatives available to the applicant include the following: Removing the existing building encroachments within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing dwelling would be economically unreasonable and may disrupt other existing site improvements.

The applicant and owner are honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the applicant or owner to deliberately or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant 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 or applicants 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. The existing building improvements were constructed by the applicant under one (1) building permit. Building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any building setback irregularities. The current owner or applicant were not aware of any encroachment problems until the modern survey was performed.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within one of the two side yards. The existing building encroachments are not physically and visually obtrusive from the existing adjacent property or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears, the existing dwelling's "footprint" and building encroachments within the affected side yard have not visually, physically or adversely affected the rights of the adjacent or surrounding property owners. Therefore, it is felt the existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the

Mr. Keith T. Iwamoto, RA
CENTURY 21 HOMEFINDERS OF HAWAII
Page 5
July 14, 1999

property and within the affected side yard were caused by a unintentional mapping and building discrepancies or misinterpretation of the minimum yards during building construction. Inspection of the property during the life of the building permit by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

The subject variance application was acknowledged by certified letter dated May 20, 1999.

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 applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is July 12, 1999.
2. The approval of this variance is only from the Zoning Code. 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.
3. The location of the existing dwelling on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing building improvements identified on the plot or site plan dated May 5, 1999, to remain on the subject property.
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Keith T. Iwamoto, RA
CENTURY 21 HOMEFINDERS OF HAWAII
Page 6
July 14, 1999

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Goldstein", followed by a horizontal line extending to the right.

for VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp
F:\WP60\WRY\FORMLETT\VARAP110.ZC1

c: Real Property Tax Office