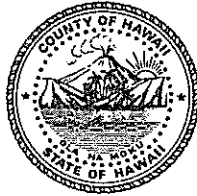


Stephen K. Yamashiro
Mayor



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 095 324 949

October 13, 1999

Ms. Joanne V. Baptiste
CENTURY 21
586 Kanoiehua Avenue
Hilo, HI 96720

Dear Ms. Baptiste:

VARIANCE PERMIT NO. 1055 (VAR 99-070)
Applicant: JOANNE V. BAPTISTE
Owners: LOUELLEN KAILI
Request: Variance From the Minimum Yards
Pursuant to Chapter 25, Zoning, Ratified April 6, 1999
Tax Map Key: 1-1-007:066, Lot 230

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. 1055 allows portions of an existing dwelling "AS BUILT" to remain within the affected side yard with a side yard of 13.54 feet in lieu of the minimum 15 feet side yard and portions of an existing water tank "AS BUILT" to remain within the front yard and affected side yard with a 15.01' front yard and 11.07 feet side yard, in lieu of the minimum 25 feet front yard and 15 side yard, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (3), (A) and (B).

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum front yard and side yard requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 20,000 square feet is Lot 230, Ld. Ct. 1053, Map-12, Mauna Loa Estates Subdivision, located at Keaau, Puna, Hawaii. The property's address is 11-3813 2nd. Street. The property is zoned Single-Family Residential (RS-20) by the County.
2. The existing dwelling and water tank improvements were constructed under a building permit (B No.921582) was issued on August 3, 1992 to Ivy Kumai to construct the first dwelling by the Department of Public Works (DPW), Building Division in Hilo. In addition to this building permit, a second building permit (B No. 921583) was also issued to Ivy Kumai to construct a second or ohana dwelling on the property. To date only the first dwelling and water tank and related site improvements have been completed.
3. It appears the site plans attached to the detailed building construction plans for both dwellings and water tanks were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections to construct the first dwelling and water tank were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements. B No.921582 to construct the first dwelling and water tank was opened on August 3, 1992 and closed on January 6, 1993 by the DPW.
4. The site plan drawing, drawn to scale and dated July 18, 1999, identifies the location of the affected portions of the existing first dwelling and water tank that encroach into the front and affected side yards. The dwelling encroaches 1.46 feet into the affected side yard and the water tank encroaches 9.99 feet and 4.93 feet into the front and affected side yard, respectively.
5. The applicant's attachment, dated August 6, 1999, states in part:

"The buyer of the above property is requesting a variance from setback requirements for both the dwelling and the water tank as per attached application.

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The buyer purchased the property via a pre-foreclosure and "as is" sale. She was not the original owner or builder of said property. The original building permit #921582 was issued 8/92 and finalled on 1/93 according to Building records. There was nothing made known at that time to the original contractor of any encroachments and the permit was finalled. The new buyer would like to remedy the encroachment situation.

There are currently no other reasonable alternatives as the house would need to be moved to be placed at the correct setback requirement, and, in order to move the water tank, this would involve redirecting the plumbing to the back of the house and placing the water tank there. Booth (sic) of these alternative would be cost prohibitive for the buyer. We, therefore, feel there are not other "reasonable alternatives to resolve this difficulty".

6. The Department of Finance-Real Property Tax memorandum dated September 3, 1999, in the variance file states in part:

"There are no comments at this time"

"Current Real Property taxes are paid through December 31, 1999."

7. The State Department of Health (DOH) memorandum dated September 2, 1999, in the subject variance file states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

8. The Department of Public Works (DPW) memorandum dated August 30, 1999, in the subject variance file states in part:

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

2. All roads within Mauna Loa Estates are private roads."

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The attached DPW-Building Division's memorandum dated August 26, 1999 states in part:

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

The minimum setbacks shall be maintained as follows:

*Residential structures-3 ft. side, 3 ft. rear"

9. The applicant submitted proof of service to serve first and second notice of the application on the designated and surrounding property owners on September 3, 1999. No oral or written objections to the variance application were received by the Planning Department.

The applicant and owner submitted a site plan which identifies the location of an existing dwelling improvements and covered water tank. The site plan submitted identifies the distances between the building encroachments and the affected front and side boundary lines. A portion of the existing dwelling was constructed within one of the property's two side yards and portions of the water tank were constructed within the front and the affected side yard.

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.

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. Pursuant to the site's existing grade and "lay of the land" and site topology conditions, the removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing water tank 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 current owner to deliberately or intentionally allow the building encroachment problems to

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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 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 available between permitted structure(s) and property lines. The existing building improvements were constructed by the previous owner under a single building permit. Building inspections of the premises, during building construction and throughout the life of the building permit did not disclose any building setback irregularities on the corner lot. 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 the front and one of the two side yards. The existing building encroachments are not physically and visually obtrusive from the surrounding property or existing right-of-way. The perimeter landscaping improvements within the subject TMK parcel and along the front and affected side property limit viewing of the property from the existing right-of-way and serve as a buffer between the existing building encroachments and the affected boundary lines. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, and the existing and surrounding land patterns. It appears, the existing dwelling and water tank encroachments within the affected yards 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 property and within the front yard and affected side yard were caused by a unintentional mapping and building discrepancies or misinterpretation of the minimum yards during building construction and at the time of building construction to accommodate existing site topography. 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.

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The subject variance application was acknowledged by certified letter dated August 9, 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 October 7, 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 a portion of the existing dwelling and water tank on the subject property will not meet Chapter 25, the Zoning Code's, minimum front yard and side yard requirements. The approval of this variance allows the existing dwelling and water tank encroachments identified on the plot or site plan dated July 18, 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.

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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.

VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp
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c: Real Property Tax Office
OD 92-77