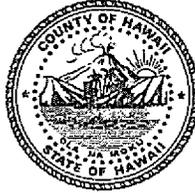


Stephen K. Yamashiro
Mayor



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 095 324 957

October 20, 1999

Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.
1436 Young Street
Honolulu, HI 96814-1846

Dear Mr. Shimabukuro:

VARIANCE PERMIT NO. 1061 (VAR 99-072)
Applicant: SANSEI ARCHITECTS, INC.
Owners: THEODORE M. VALDEZ, ETAL.
Request: Variance From the Minimum Yards
Pursuant to Chapter 25, Zoning, Ratified April 6, 1999
Tax Map Key: 2-7-020:013, Lot 60

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. 1061 allows portions of an existing dwelling to remain within the affected side yard "AS BUILT" in lieu of the minimum side yard of 10 feet as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (B).

FINDINGS AND RECOMMENDATION

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

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Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 2

October 20, 1999

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 0.446 acre is Lot 60, Being a Portion of L. C. Aw. 7715:16, Block "B", Honolii Pali, Tract 2, Paukaa, South Hilo, Hawaii. The property's address is 303 Kuikahi Street. The property is zoned Single-Family Residential (RS-20) by the County. The existing dwelling and subject TMK property is within the County's Special Management Area (SMA).
2. The applicant submitted a copy of an original site plan, drawn to scale and dated August 19, 1976, showing the proposed location of the original dwelling to be constructed on the subject TMK property. A minimum 10'-0" distance between the wall of the proposed dwelling and the affected side boundary line is denoted on the original 1976 site plan. The original dwelling was constructed under a building permit (B No.762331) issued by the Department of Public Works (DPW), Building Division in Hilo. B No. 762331 was opened by the DPW on October 14, 1976.
3. It appears the original 1976 site plan attached to the original detailed building construction plans were reviewed and approved by the Planning Department and other affected government agencies prior to October 14, 1976. The required building inspections were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements constructed under B No. 762331. B No. 762331 was closed on February 8, 1978 by the DPW, Building Division.
4. The current owners were not told nor aware of any building encroachment problems when they purchased the property. The encroachments into the affected side yard were discovered when the owners architect and applicant, Sansei Architects Inc., were asked to prepare plans to enclose the existing carport and other interior building alterations within existing building's footprint. BP NO. 990939 to allow the improvements within the existing carport and other interior building alterations within lower and upper levels of the existing dwelling was opened on August 24, 1999. During the preparation of the detailed plans, the site plan drawing of Lot 60 prepared by a licensed surveyor identifies the "AS BUILT" location of the existing dwelling improvements constructed in the late 1970s. The recent site plan of Lot 60 disclosed that a small portion of the original dwelling encroaches into one of property's two side yards.

Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 3

October 20, 1999

5. The recent site plan drawing, drawn to scale and dated July 24, 1999, by Murray, Smith & Associates, Ltd., submitted with the variance application identifies the distance between the dwelling footprint and wall line and the affected side boundary line. The dwelling encroachments intrude between .76 to .95 (approximately 9" to 11") into the affected side yard. The minimum clearspace between the roof eave to the affected side boundary line are identified and meet minimum Zoning Code requirements.
6. The applicant's attachment, dated August 10, 1999, states in part:
 - "4. The current owners were not aware of any encroachment problems until a modern survey was performed. A recent survey of the property and map of Lot 60 identify the "AS BUILT" location of the existing dwelling built in 1976 on the property was ordered and prepared by a licensed land surveyor.

The enclosed site plan drawing, drawn to scale and dated July 24, 1999, by Murray, Smith & Associates, Ltd., identifies the location of the existing dwelling "AS BUILT" on the subject property. The site plan identifies the location of the building encroachments within one of the property's two side yards. Furthermore, the site plan denotes distances between the respective building encroachments and the affected side boundary line.
 5. It appears that the previous owners hired a licensed contractor or business to construct the dwelling on the property. It appears a small portion of the existing dwelling was inadvertently constructed within one of the property's two side yards. Building inspections of the premises, during building construction throughout the life of the building permit did not disclose any building setback irregularities. The building permit was closed by the DPW-Building Division."
7. The Department of Finance-Real Property Tax memorandum dated August 30, 1999, in the variance file states in part:

Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 4

October 20, 1999

"There are no comments at this time."

"Current"

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

8. The Department of Public Works (DPW)-Engineering Division's memorandum dated September 1, 1999, 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 Division).
2. Kuikahi Street, fronting the subject property, is a County road. Remove all obstructions and encroachments within the County right-o-way, in conformance with Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
3. Storm Drain Easement "J" is a County easement. Remove all obstructions and encroachments within the County easement. Relocate the Chain link fence out of the easement."

9. The Department of Public Works (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
Commercial structures-5 ft. side, 5 ft. rear"

"Others: Conform to the 1991 UBC, Sec. 104(b) as amended by the County of Hawaii."

Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 5

October 20, 1999

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

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
11. The applicant submitted proof of service for the first and second notice of the application to the designated and surrounding property owners. The first notice was mailed by the USPO on August 16, 1999, and the second notice was mailed by the USPO on August 31, 1999. An objection letter dated August 27, 1999 was received from Steven S.C. Lim, Esq. who represents Robert and Bebi Bloom, on August 27, 1999. No other verbal or written objections to the variance application were received from any other of the surrounding property owners.

The applicant and owner submitted a site plan which identifies the location of the proposed dwelling improvements dated 1976 and a recent site plan of Lot 60 prepared by a land surveyor, dated July 24, 1999 which shows the existing location of the dwelling improvements which were constructed in 1976. The site plans submitted identify the distance between the proposed dwelling and the affected side boundary line and distances between the existing dwelling and affected side boundary line. Portions of the original dwelling constructed in 1976 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 current owners 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/owners. 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.

Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 6

October 20, 1999

The applicant, who is the current Project Architect is honestly trying to resolve a building encroachment problem which was established on the property in 1978. No evidence has been found to show indifference or premeditation by the past or current owners 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 owners/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 applicant 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 owner(s) under two (2) building permits. 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 owners and applicant were not aware of any encroachment problems until the modern survey and application for a building permit to permit further carport improvements and interior building alterations were sought. The circumstances which permitted the existing building improvements to be built on the property within the affected side yard 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 adjacent and surrounding properties or existing public right-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 for nearly 21 years. 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 affected side yard were caused by unintentional mapping and building discrepancies or misinterpretation of the minimum yards during building construction by the original building contractor or previous owners. 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.

Mr. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 7

October 20, 1999

The subject variance application was acknowledged by certified letter dated August 25, 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 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. Portions of the existing dwelling on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard requirements. The approval of this variance permits the existing dwelling's location and allows the existing building improvements identified on the plot or site plan dated July 24, 1999, to remain on the subject property.
4. The current building alteration improvements and 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. Myles H. Shimabukuro, AIA
SANSEI ARCHITECTS, INC.

Page 8

October 20, 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,



VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp

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✓ TMR 12-01-2000 10:13
c: Real Property Tax Office
Steven S.C. Lim, Esq.