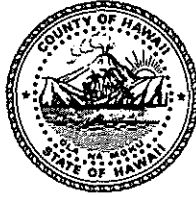


Stephen K. Yamashiro
Mayor



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 095 324 306

January 28, ~~1998~~
1999

Mr. Les Barclay
P. O. Box 431
Pepeekeo, HI 96783

Dear Mr. Barclay:

Variance Permit No. 984 (VAR 98-80)

Applicant: LES BARCLAY

Owner: PETER CABRAY

Request: Existing Dwelling: 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: 2-7-011:019

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to permit portions of an existing dwelling to remain on the property with a side yard of 2.11 feet in lieu of the minimum 15 feet from the respective side yard and with a rear yard of approximately 12.5 feet +/- in lieu of the minimum 25 feet rear yard 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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plus by Les Barclay

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property containing 0.470 acre is Lot 23, Mauiilii, South Hilo, Hawaii, and is zoned Agricultural (A-20a) by the County and designated Agriculture "A" 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 1990. Photographs of the property were submitted by the applicant with the variance application.
3. The site plan, drawn to scale and dated November 10, 1998, submitted with the variance application identifies the location of the existing dwelling showing portions and shows the location of the dwelling encroachments, cesspool location, and concrete driveway connection via the Old Mamalahoa Highway right-of-way.
4. The subject property's address is 27-1008 Old Mamalahoa Highway. The plans and building permit application to construct the existing dwelling were reviewed by the appropriate government agencies. The existing dwelling and related site improvements were constructed under Building Permit-B No.901600 issued to Olga Barclay which was opened on July 31, 1990 and closed on June 26, 1995 by the Department of Public Works (DPW)-Building Division. It appears, the existing driveway access, circular driveway, cesspool, dwelling, and other related site/landscaping improvements were built and established on the property during a period of 5 years. The required building inspections by the affected government agencies of the dwelling and other site improvements occurred during construction of the building improvements on the property. The existing building encroachments within the affected side and rear yards went undetected by government agencies and the public for nearly 8 years. The existing dwelling and site improvements constructed on the property are being sold "AS BUILT" and the building encroachments within the affected yards were discovered after a modern survey of the property was performed in 1998.
5. Pursuant to a recent site inspection of the property, there is perimeter landscaping materials (shrubs, lawn, etc.) planted between the building encroachments and the affected side and rear yards. These landscaping materials act as a buffer to screen the building encroachments from the adjacent property identified as TMK: 2-7-011:024.

6. Pursuant to the site inspection of the adjacent property TMK: 2-7-011:024, it appears that the existing dwelling and other accessory buildings located on parcel 024 were built and established on the property before the Zoning Code was adopted in 1967. It appears the use of size of the surrounding properties and overall character of this neighborhood had not significantly changed during the last 40 years.

7. The Department of Public Works (DPW) memorandum dated December 23, 1998, states in part:

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

1. Buildings shall conform to all requirements of codes and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code. We show no record that a driveway permit was issued for the existing driveway."

The Building Division-DPW memorandum dated December 27, 1998 states in part:

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

The exterior wall or projections less than 3 feet to the property line shall be constructed provided one-hour fire resistive occupancy separation."

8. The Department of Health memorandum dated December 22, 1998, states:

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

9. The memorandum from the Department of Finance-Real Property Tax Office dated December 28, 1998, for "2-7-011-019" states in part:

"There are no comments at this time

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

10. The Planning Department received several phone calls from the daughter of the owner of the adjacent property (TMK: 2-7-011:024) to discuss privacy issues and need for the retention of existing landscaping shrubs growing near and along the affected building encroachments on both sides of the common boundary line.

The specific concerns discussed during the site inspection and were considered and shall be addressed in the variance conditions below.

The present owners submitted a copy of a recent site or plot plan, drawn to scale, which identifies the location of the existing dwelling unit which was constructed within the minimum building yards. The site plan identifies and denotes the distances between the building encroachments from the affected side yard and rear yards. For the record the plot plan submittal does not identify and show the location of all existing landscaping improvements and fences on the subject property.

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 staircase encroachments are architecturally compatible.

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

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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 older 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 1990. Therefore, it is felt the existing dwelling encroachments within the side and affected rear yards will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was deemed complete on November 20, 1998, and was acknowledged by Certified Letter dated December 19, 1998. In light of a recent December 1998 ruling and court decision, additional time to consider the variance application and variance procedures was necessary. Please accept our apology for the delay.

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 January 19, 1999.
2. The approval of this variance from the Zoning Code pertains only to the affected dwelling. 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 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

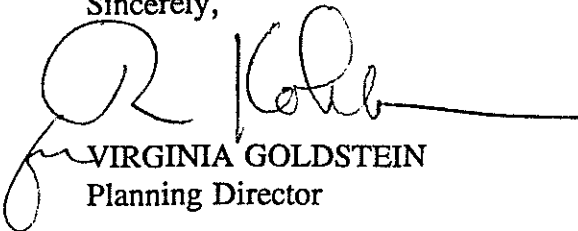
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plan submitted with variance application and/shall meet current DPW building code requirements including approval of all necessary building permits.

4. The owners, successors or assigns shall plan and/or maintain the existing landscaping materials or any permitted architectural landscape buffers on the subject property between the building encroachments and the affected side and rear property lines. The permitted and existing planting materials shall be healthy and free of plant debris.
5. 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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xc: Real Property Tax Office

Mrs. Lillian Sakae
c/o Mr. Bill Kitagawa
Rtd 1 Box 106
Hilo, HI 96720