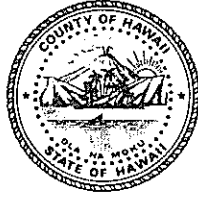


Stephen K. Yamashiro
Mayor



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

7099 3220 0000 4869 6346

May 8, 2000

Mr. Jeff Gomes
c/o Ms. Wendy K. Wagner
281 Edita Street
Hilo, HI 96720

Dear Mr. Gomes:

VARIANCE PERMIT NO. 1114 (VAR 00-008)

Applicant: JEFF GOMES

Owner: JEFF GOMES

Request: Variance From Minimum Yards,

Pursuant to Chapter 25, Zoning

Ratified April 6, 1999

Tax Map Key: 2-5-061:001

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. 1114 allows portions of an existing dwelling "AS BUILT" to remain on the subject property with a minimum side yard of 16.64 feet and 13.64 feet open space from the affected side yard, in lieu of the minimum 20 feet side yard and 14 feet open space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, 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:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 43,575 square feet is Lot 1 being a Portion of Pacific Plantations, Increment 1-A, Kukuau Second, South Hilo, Hawaii. The property's address is 281 Edita Street.
2. It appears that the existing dwelling and related site improvements were constructed under previous building permit(s) issued in by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the original site plans attached to the original building drawing plans for the dwelling and other related site improvements 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.
4. The map showing existing conditions, drawn to scale and dated June 12, 1999, 1999 by Paul H. Murray, RLS, identifies the existing dwelling and building encroachments located on the subject property.
5. The applicant's "Explanation" attached to the variance application states in part:

"A request to the set back (sic) requirement is hereby requested. Th (sic) subject home identified as TMK: 3/2-5-61-1 was acquired by myself on June 15, 1999. A few days prior to the recording of the transaction it was discovered that the right rear corner of the home protruded into the sideline set back (sic) by approximately 3.5 feet. I see no other reasonable alternatives that would resolve the current situation.

In an attempt to resolve this situation prior to a possible re-sale in the distant future, I hereby request this variance. We tried to contact the original builder of the subject home, but it has been discovered that he is now deceased. I feel that the error was made in thinking that the North side boundary ran straight up to the rear boundary, but in fact it runs at an angle. The front of the home meets the minimum setback of 20 feet but with the boundary running at an angle the rear does not. I feel that the home was plotted out in the front assuming the boundary ran straight up. There is a cesspool on the property. I am unsure of its exact location.

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I feel that the approval of this variance would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and subdivision codes, and the County General Plan and will not be materially detrimental to the public welfare or course (sic) substantial, adverse impact to the area's character or the adjoining properties."

6. The Department of Finance-Real Property Tax Office memorandum dated February 9, 2000 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 February 10, 2000, 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 February 29, 2000, in the subject variance file states in part:

"We have reviewed the subject application forwarded by your memo dated February 2, 2000 and have the following comments.

Approval of the application shall be conditioned as noted below.

1. The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.

Please refer questions regarding building requirements to the Building Division at 961-8331."

9. Proof of serving first and second mailing of notice to the owners and lessees of record of all lots within five hundred feet was submitted by the applicant's representative. No oral or written objections to the subject variance were received by the Planning Department.

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The applicant submitted a site plan, which identifies the location of an existing dwelling and related building improvements. The site plan submitted identifies the distances between the dwelling 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 owners/applicant 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 owners/applicant. 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 is honestly trying to resolve existing building encroachment problems. No evidence has been found to show indifference or premeditation by the previous or current owner or applicant 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 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 affected portions of the existing dwelling and other site improvements were constructed by a previous owner under building permit(s) issued by Hawaii County. Building inspections of the premises, during building construction and throughout the life of the building permit(s) did not disclose any building setback irregularities. The current owner and applicant did not discover the encroachments until the sale of the subject property.

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The circumstances, which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within a side yard. The existing building encroachments are not physically and visually obtrusive from the existing 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 building encroachments built and established on the property has not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. 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 created and induced by an accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction by the previous owner. Inspection of the property during the life of the building permit(s) 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 February 2, 2000. Additional time to review the subject variance application by the participating agencies.

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/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
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.

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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 affected portion of the existing dwelling identified on the plot or site plan submitted with the variance application 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, minimum building yards, 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

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c: Real Property Tax Office