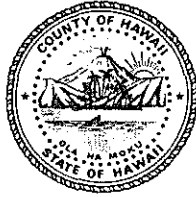


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

CERTIFIED MAIL

7099 3220 0000 4868 9966

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

July 6, 2000

Mr. William J. Stormont
55 Nahala Street
Hilo, HI 96720

Dear Mr. Stormont:

VARIANCE PERMIT NO. 1137 (VAR 00-040)

Applicant: WILLIAM J. STORMONT

Owners: WILLIAM J. STORMONT

Request: Variance from the Minimum Yards

Pursuant to Chapter 25, Zoning

Tax Map Key: 2-6-025:021

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. 1137 allows portions of an existing dwelling, "AS BUILT", to remain on the corner lot, with a minimum 19.20 feet and 19.65 feet front yards, respectively, in lieu of the minimum 20 feet front yards as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (2), (A).

FINDINGS AND RECOMMENDATION

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 11,687 square feet is Lot 17, Alae Subdivision, south Hilo, Hawaii. The property is zoned Single-Family Residential (RS-15) by the County. Lot 17 is a corner lot and is bounded by Nahala Street and Kahoa Street.

006849

JUL 14 2000

Mr. William J. Stormont

Page 2

July 6, 2000

2. It appears the original building improvements were constructed under two (2) building permits (B No. 50260 and B No. 862015) in 1971 and 1986, respectively, were issued by the Department of Public Works (DPW), Building Division in Hilo to the previous owner(s).
3. It appears the site plans attached to the detailed building construction plans for the original dwelling and addition 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. B No. 50260 to construct the original dwelling was opened on November 8, 1971 and B No. 862015 to construct an open deck addition to the existing dwelling was opened on December 9, 1986. It appears that original building permit issued in 1971 and the second building permit issued in 1986 were never closed by the previous owner(s) and the DPW prior to conveyance of the property to the current applicant and owner(s). For the record, the foregoing building permits were not issued to the applicant or the current owner(s) and were built prior to 1988.
4. The site plan drawing, drawn to scale and dated May 12, 2000, by the Paul H. Murray, RPLS, identifies the existing dwelling encroachment into the affected front yard(s) along Nahala Street and Kahoa Street. Portions of the existing dwelling encroach 0.80 feet into the front yard along Nahala Street and 0.35 feet into the front yard along Kahoa Street. It appears that the building footprint and encroachments into the respective front yards were built in the 1970s and were completed prior to 1988.
5. The applicant's attachment, "UNREASONABLY COSTLY AND WOULD RESULT IN LOSS OF STRUCTURAL SOUNDNESS", states in part:
 - “1. 1988-purchased existing property.
 2. During escrow a minor encroachment was discovered.
 3. The existing building improvements were completed prior to our purchase of the property in 1988.
 4. It is felt that this variance will not be materially detrimental to the public welfare or cause substantial, (sic) adverse impact to an (sic) area's character or to adjoining properties.”

Mr. William J. Stormont
Page 3
July 6, 2000

6. The State Department of Health (DOH) memorandum dated June 14, 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."

7. The Department of Public Works (DPW) memorandum dated May 15, 2000, states in part:

"We have reviewed the subject application forwarded by your memo dated May 25, 2000 and oppose the approval of the application for the reason noted below.

Building permit 862015 for the subject dwelling was never finalized.

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

Note: The status of the outstanding building permit(s) shall be addressed by the original permittees, their contractors, agents, and their assigns or successors.

8. The Department of Finance-Real Property Tax memorandum dated June 7, 2000, in the variance file states in part:

"There are no comments at this time"

"Current"

"Remarks: Real Property taxes are paid through June 30, 2000."

9. The applicant submitted a letter dated June 14, 2000 and related attachments showing proof of service or good faith efforts to serve first and second notice of the application on the designated surrounding property owners or lessees.

No oral or written objection to the variance application was received by the Planning Department.

The applicant and owner submitted a site plan, which identifies the location of the existing dwelling, open deck, and other existing site and landscaping improvements. The site plan submitted identifies the distances between the dwelling encroachments and the affected front boundary lines. Portions of the existing dwelling encroach into the front yards.

Mr. William J. Stormont

Page 4

July 6, 2000

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 applicants. Alternatives available to the applicant and owner(s) include the following: Removing the existing building encroachments within the front yards and making corrections to the 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/open deck would be economically unreasonable and may disrupt the building's design and other related building improvements.

The applicant and owner(s) are honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the applicants or previous owner(s) 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 applicant and owner(s) 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 previous building permits and existing building improvements were constructed by the owner(s) before the applicants purchased the subject property. Building inspections of the premises, during building construction and throughout the life of the building permits issued to the previous owners did not disclose any building setback irregularities. The applicants were not aware of any encroachment problems until the modern survey was performed in conjunction with a sale of the property.

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 existing front yards and was completed prior to purchase of the property by the current owner(s) in 1988. The existing building encroachments are not physically and visually obtrusive from the existing rights-

Mr. William J. Stormont

Page 5

July 6, 2000

of-way or the adjacent properties. 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, that the existing dwelling's footprint" within the respective areas of the front 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 affected front yards were caused by a unintentional mapping and building discrepancies or misinterpretation of the minimum yards during building construction by previous owner(s) in the 1970s. Inspection of the property during the life of the original building permits 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 30, 2000.

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.
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's enclosed garage constructed on the subject property will not meet Chapter 25, the Zoning Code's, minimum front yards. The approval of this variance allows the existing building encroachments within the front yard along Nahala Street and front yard along Kahoa Street identified on the plot or site plan dated May 12, 2000, 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 yards, and building occupancy.

Mr. William J. Stormont
Page 6
July 6, 2000

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/VKG:pak
F:\WP60\WRY\FORMLETT\VARAPPTMK26025021.STORMONT

c: Real Property Tax Office