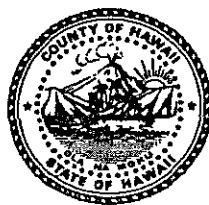


Harry Kim
Mayor



Christopher J. Yuen
Director

County of Hawaii

PLANNING DEPARTMENT

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

December 11, 2000

Mr. Bret Marsh
BRET MARSH
DRAFTING SERVICE
P. O. Box 10939
Hilo, HI 96720

Dear Mr. Marsh:

Variance Permit No. 1158 (VAR 00-067)
Applicant: BRET MARSH
Owners: PHILIP J. ITO, ET AL.
Request: Variance From Minimum Yards
Pursuant to Chapter 25, of the Hawaii County Zoning Code
Tax Map Key: 2-4-014:150, Lot 32

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to permit a building addition to an existing dwelling with a minimum 8 feet side yard and 4 feet open space in lieu of the minimum 10 feet side yard and 5 feet open space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 5, Section 25-5-7, Minimum yards, (a), (2), (B), 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 the proposed building addition to the existing dwelling should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property containing 16,240 square feet is Lot 32, Being a Portion of Waiakea Homesteads Lots, "5th. Series", Waiakea, South Hilo, Hawaii. The property's address is 127 Anela Street.

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2. The property was zoned Single-Family Residential (RS-10) by the County in 1967. The property is designated Urban "U" by the State Land Use Commission (LUC). The property is not within the County's Special Management Area (SMA).
3. The applicant's site plan and detailed drawings submitted with the variance application identifies the location of the existing dwelling and proposed location of the building improvements. No electrical or plumbing improvements are proposed.
4. It appears the existing dwelling and related site improvements were constructed and established on the property in 1966 prior to the adoption of the original 1967 Zoning Code.
5. Portions of the existing dwelling are located within the minimum 10 feet side yard established by the Zoning Code in 1967. As such portions of the dwelling's existing living spaces area are located within the minimum side yard and open spaces and are deemed to non-conforming. The applicant was asked by the owners to redefine the existing living area and make some additions to accommodate their lifestyle brought on by advancing age.
6. The applicant's detailed written explanation, dated July 31, 2000, states in part:

"At issue is a non-conforming side setback condition. The existing residence, a 2-story structure, was constructed in 1966, prior to the current zoning codes. The south facing building line of the upper level is 7'-0" from the property line. The lower is 8'-0" from the property line. It is from the existing lower level building line that the proposed addition extends.

Current side yard setbacks of this property are 10'-0". The existing cesspool is located such that simply adjusting the location of the proposed addition is not an option. Feasibility of the addition is compromised, as well as non-conformance to related department codes, when a detached structure is considered. The aforementioned conditions can be clearly viewed from the site plan and floor plan drawings, which have been included for your review and consideration.

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This variance is being requested in (sic) the grounds that the existing conditions prohibit the conforming of the side yard setback requirement. The 2'-0" encroachment is not an additional protrusion, but a continuation of the existing wall line. Re-design or relocation is impractical and non-functional. Acceptable (sic) of this variance request enables the esthetic continuation of all existing conditions without impact to surrounding properties."

And, in addition to the above, the applicant submitted a second letter dated August 16, 2000 which states in part the following:

"The floor plan has been modified to reflect the conditions most recently discussed and the plans are being re-submitted for your review and comment. Should you find additional discrepancies, or have questions, which I may be of assistance in responding to, please do not hesitate to contact me at your earliest convenience."

Pursuant to previous discussions with the applicant, it is understood that the proposed building addition; which includes an area identified as "REC. RM. W/ BAR", will not be utilized as a kitchen or be construed to represent separate "living area" or constitute a separate dwelling unit.

Pursuant to a recent site inspection by the Planning Department, it appears the existing dwelling and dwellings within 300 feet of the subject property were constructed around the same time. The character of the neighborhood and surrounding land patterns and uses have not changed very much during the past 35 years.

7. The Department of Public Works memorandum dated September 25, 2000, states in part:

"We have reviewed the subject application forwarded by your memo dated August 31, 2000, and have the following comment:

The Building Division recommends the current 10'-0" building setback be maintained."

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8. The Department of Health memorandum dated September 11, 2000, states:

"The existing cesspool may service a total of 1000 gallons per day of wastewater or a total of five bedrooms. Due to your lot size, an additional Individual Wastewater System is not allowed due to lack of land area."

9. The REAL-PROPERTY TAX CLEARANCE (REV. 07/99) form for (3) 2-4-014-150-0000 dated August 7, 2000, submitted with the variance application states in part:

"This is to certify that Ito, Philip C (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including 6/30/00."

Note: No further response to the Planning Department memorandum dated August 31, 2000 from the Real Property Tax Office was received.

10. The applicant submitted a list of surrounding property owners and proof of mailing of the first and second notice to the surrounding property owners were mailed on August 9, 2000 and November 1, 2000, respectively. The Planning Department received no telephone objections or written objections to the subject variance application.

The present owner submitted a copy of a site or plot plan, drawn to scale, which identifies the location of the proposed building improvements to be built on the subject property. The site plan identifies the existing dwelling location and distances between the existing and proposed building improvements from the affected boundary line(s).

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 constructing the proposed building improvements within the remaining buildable area prescribed by the Zoning Code. The proposed building's proportion

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and shape of the building improvements would be architecturally compatible and similar to the surrounding dwellings along the existing rights-of-way and within the immediate neighborhood.

The Planning Department acknowledges there may be other design or building alternatives available to the owner 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 are to assure that adequate air and light circulation is available between permitted structure(s) and property or boundary lines. The proposed setback variance will not hinder adequate light and air circulation around the existing dwelling. In view of similar dwelling/garage combinations within the immediate neighborhood, it is felt the proposed building addition improvements will not depreciate or detract from the character of the surrounding neighborhood. It appears the existing dwelling's location established prior to 1967 has not visually or physically adversely affected the rights of the adjacent property owners or surrounding properties. Therefore, it is felt the proposed building improvements within the affected side yard and respective minimum open space requirement will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was deemed complete on August 16, 2000, and was acknowledged by certified letter dated August 31, 2000. Pursuant to the October 31, 2000 letter, additional time was required to allow the public to comment on the variance application.

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.

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2. The approval of this variance is only from the Zoning Code. 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 pertaining to the construction of the proposed building addition.

No ohana dwelling unit shall be permitted on the subject property.

3. The location and portions of the proposed new building addition will not meet the minimum side yard and corresponding permitted projections into yards and open spaces as required by the Zoning Code. The applicant is required to obtain a building permit from the DPW-Building Division to construct the proposed building addition and comply with all other building codes and statutes of building construction.
4. 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,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office