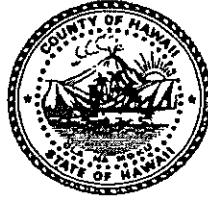


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
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
7000 0600 0024 2904 1018

February 13, 2001

Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
171 Kapiolani Street
Hilo, HI 96720

Dear Mr. Yamamoto:

VARIANCE PERMIT NO. 1184 (VAR 00-082)

Applicant: ED YAMAMOTO

Owners: AMY S. YAMAMOTO

**Request: Variance from the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,**

Tax Map Key: 2-4-011:087, (SUB 99-144)

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. 1184 allows portions of the existing dwelling "AS BUILT" to remain upon a proposed lot (Lot 33-A) with minimum side yard of 6.00 feet from the proposed side boundary line and minimum 3.00 feet open space between the eave(s) and said proposed side boundary line in lieu of the minimum 10 feet side yard and minimum 5 feet open space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 1, 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 from the minimum side yard and open space requirements should be approved based on the following findings:

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Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
Page 2
February 13, 2001

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 21,780 square feet is Lot 33, Being a Portion of Grant 11,117 to T. Uemoto, Land Situated at Waiakea, South Hilo, Hawaii. The property's address is 534 Naniakea Street.

The subject TMK property, Lot 33, was recently rezoned from Single-Family Residential (RS-15) to Single-Family Residential (RS-10). Pursuant to Ordinance No. 99 47 (Ord. No. 99 47), effective May 4, 1999, is subject to conditions "A" through "I", inclusively. Ord. No. 99 47, Condition B, requires the owner(s), applicant, successors or assigns to secure Final Subdivision approval by May 4, 2004.

Subsequent to May 4, 1999, the applicant/owner(s) submitted a subdivision application (SUB 99-144) and a preliminary plat map to the County of Hawaii Planning Department which proposes to subdivide the subject property into "LOT 33-A" and LOT 33-B". Pending resolve of the subject variance application, further action to consider the proposed 2-lot subdivision has been deferred.

2. The applicant's representative submitted an "ATTACHMENT" which states in part:

"My mom's home and property is situated on Naniakea Street (presently a dead-end street) and contains an area of 21,780 square feet. She is proposing to subdivide the parcel into two (2) lots, which is allowable under the present zoning. The front lot will have her home and the second lot will be a flag lot on which I am planning to build my home.

This second lot will be a flag lot and the pole portion of the lot will have a clearance of 6 feet to the existing dwelling. We are requesting a variance to allow this clearance in lieu of the required 10.00 feet.

The primary reason for subdividing is for financing purposes. The subdivision will allow me to finance my home without encumbering my mom's home.

Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
Page 3
February 13, 2001

There are various alternatives to the proposed subdivision:

- Alternative No. 1:** Under the zoning code, I may build a second dwelling without subdividing the property. However, for financing purposes, my mom will also be responsible for the home since she owns the property.
- Alternative No. 2:** In lieu of a flag lot, create a road and utility easement. This would involve constructing a driveway pavement within the easement. Eventually, I intend to construct a paved driveway for the flag lot. With the easement, the pavement must be constructed before subdivision approval is granted. The flag lot subdivision will minimize subdivision expenses.

The granting of this variance is consistent with the general use of the surrounding area and will not be detrimental to the public's welfare."

3. For the record, a recent site inspection was conducted of the area to view the existing site improvements by Planning Department staff. It appears the original two (2) story dwelling and other surrounding dwellings in the neighborhood were constructed during the 1950s and early 1960s. Most of the original dwelling's were centrally located within most of the original 21,000 + square feet lots fronting Naniakea Street.
4. The site plan drawing, drawn to scale, by Imata and Associates, Inc., dated October 27, 1999, identifies the location of the existing dwelling and other related site improvements on the existing TMK property. The site plan denotes the distances between the existing dwelling the proposed side boundary line. The site plan also denotes the location of existing utility lines, cesspool location, stonewalls, and existing landscaping (hedges) improvements within the proposed lots.
5. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated September 18, 2000, "TMK(s): 3-2-4-011-087-0000" which states in part:

"This is to certify that YAMAMOTO, SUEKO TRUST (owner of record) has/have paid all real property taxes due the County of Hawaii up to and including June 30, 2001."

Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
Page 4
February 13, 2001

To date, no response or comment(s) to the Planning Department's memorandum dated October 24, 2000 was received from the Real Property Tax Office.

6. The State Department of Health (DOH) memorandum, dated November 13, 2000, states:

"The existing homeowner has the option of abandoning the existing cesspool and replacing it with a septic tank and seepage pit or use the existing cesspool, provided an easement is made and an engineer certifies the structural integrity of the cesspool cover because of vehicular traffic."

7. The Department of Public Works (DPW) memorandum, dated November 21, 2000, states:

"We have reviewed the subject application forwarded by your memo dated October 24, 2000 and have no comments or objections on the request."

8. Proof of mailing a first and second notice to surrounding property owners was submitted on January 25, 2001 by the applicant's representative.

No oral or written objections to the subject application were received from the surrounding property owners.

The applicant submitted the recent survey map/site plan that identifies the location of the existing dwelling and other existing site and landscaping improvements. The site plan identifies and describes the distance between the affected portion of the dwelling and attendant roof eaves from the proposed side boundary line. Portions of the existing dwelling and attendant roof eaves will encroach into the side yard created by the proposed flag-lot configuration shown on the subdivision's preliminary plat map. The applicant became aware of the building setback problem due to the desire to the desired driveway access and desired land pattern.

Therefore, considering the foregoing facts and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant/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.

Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
Page 5
February 13, 2001

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicant include the following: Removing the portions of the older dwelling, redesigning the dwelling and roof eaves to fit within the correct building envelope prescribed by the proposed subdivision action and Zoning Code, and other similar design alternatives, etc. Because of the dwelling's age and building style, any reduction of the upper and lower level of the two (2) story dwelling would be uneconomical and drastically alter the character of the dwelling's geometry. The partial removal of the dwelling's living area and attendant roof eave(s) constructed by the applicant's parents in the 1950s will disrupt the dwelling's structural integrity and relationship to existing streetscape and neighborhood.

The applicant, is honestly trying to address a building encroachment that will be introduced by the current access and proposed new access location. No evidence has been found to show indifference or premeditation by the current applicant or the owner(s) to deliberately create or anticipate the future land pattern and zoning code parameters when the dwelling was originally constructed.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant and owners recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant and current owners 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 dwelling and related site improvements were legally constructed by the applicant's parents before the Zoning Code was adopted in 1967 and prior modern land patterns and siting limitations.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments were built on the property before the Zoning Code was adopted in 1967.

The proposed encroachments due to the subdivision will not be significant or visually obtrusive from adjacent property or rights-of-way. It appears the encroachments will not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns.

Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
Page 6
February 13, 2001

The subject variance application was acknowledged by certified letter dated October 24, 2000. Additional time to allow the applicant's representative to contact the surrounding property owners and understand past rezoning conditions was required.

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.

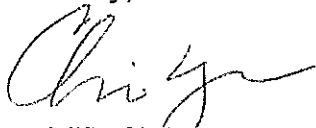
This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all of the stated conditions of approval.
2. 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. The pending subdivision application (SUB 99-144) shall comply with conditions of REZ.NO.910 and Chapter 23, Subdivisions.
3. Portions of the existing dwelling and attendant roof eave 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 existing building improvements identified on the site plan submitted with the variance application, dated October 27, 1999 to remain on the subject property. The applicant/owner(s) is/are required to denote and identify a five (5) feet wide future road widening setback line on the final subdivision plat map and meet all requirements for subdivision approval.
3. Future building improvements and permitted uses shall be subject to the future road widening setback line and comply with State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Ed Yamamoto
c/o IMATA & ASSOCIATES, INC.
Page 7
February 13, 2001

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

WRY:cps
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xc: Real Property Tax Office
REZ. NO. 910
SUB 99-144