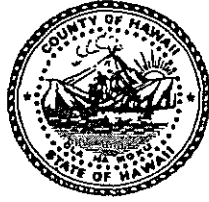


Harry Kim
Mayor



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 0974

February 13, 2001

Mr. Brian Nishimura
Planning Consultant
101 Aupuni Street, Suite No. 217
Hilo, HI 96720

Dear Mr. Nishimura:

VARIANCE PERMIT NO. 1187 (VAR 00-092)
Applicant: BRIAN T. NISHIMURA
Owners: MATTHEW & MARY ANN PYUN
Request: Variance from the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,
Tax Map Key: 6-4-018:044

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. 1187 allows portions of the existing dwelling and attached building improvements, "AS BUILT", to remain upon the subject property (Lot F) with a minimum 15.00 feet rear yard and 9.00 clear space from the respective rear yard boundary line, in lieu of the minimum 30 feet rear yard and 24 feet clear space requirements as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-76, Minimum yards, (a), 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 yards 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 2.667 acres is Lot F, Being a Portion of Grant 8380, Lot 104, and Puukapu Homesteads, 2nd Series, South Kohala, Hawaii. The property is situated off of Pukuniahia Place and is approximately 500 feet south of the intersection of the Pukuniahia Place and the Mamalahoa Highway.

The subject TMK property is zoned Agricultural (A-40a) and it appears that Lot F was subdivided before the Zoning Code, Chapter 25, of the Hawaii County Code was adopted in 1967. Pursuant to the Zoning Code, the subject property's 2.667-acre area is below the minimum 40 acre area requirements for property zoned A-40a and is therefore, a "non-conforming" property, with respect to minimum land area.

2. The applicant's representative submitted an attachment with the variance application which states in part:

"PROJECT BACKGROUND

Matthew and Mary Ann Pyun (hereinafter "applicant") acquired the subject property from Arthur M. Brown III, Trustee of Arthur Morgan Brown II Revocable Living Trust, on July 13, 1987. All of the major structures on the property were in existence at the time of acquisition by the applicants. Three of the structures, (identified as buildings 1,2, and 3 on the attached plot plan) were constructed prior to the adoption of the Comprehensive Zoning Code in 1966. Building no. 1, the existing single family dwelling, was constructed in 1951 (Building Permit No. 9384). According to County Real Property Tax records, building no. 2 was built in 1950 (Building Permit No. 8759) and building no. 3 was built in 1963 (Building Permit No. 27725). Building no. 4 (stables) was constructed in 1975 (Building Permit no. (sic) H61237).

Building no. 1 and Building no. 4 are situated less than 30 feet from the rear (east) property line and building no. 2 is situated less than 20 feet from the side (north) property line and are considered to be nonconforming buildings relative to the present setback requirements of the zoning code. These nonconforming buildings may be repaired, maintained, or enlarged provided that any enlargement or addition conforms to the regulations of the present code requirements.

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In 1998, the applicants constructed a 10' x 18' open patio addition attached to the northeast side of their dwelling (building no. 1). The patio consists of a concrete slab with a hollow tile wall, approximately 18" high, around the perimeter of the slab and a roof extending from the dwelling. The patio matches the wall line of the east side of the dwelling. The post support for the roof is situated approximately 20.6 feet from the rear (east) property line and the roof overhang is approximately 18.9 feet from the rear (east) property line.

The applicants constructed the patio addition without a building permit and are now in the process of correcting this oversight by attempting to obtain an after the fact permit. The intrusion into the required 30 foot rear yard setback area was identified while attempting to obtain the building permit."

3. It appears the site plans and proposed detailed building construction plans for the building permits to construct "after the fact" building improvements were submitted for review by the affected agencies. It appears that the existing "after-the-fact" building additions meet the minimum yards pursuant to the Zoning Code.
4. The site plan drawing, drawn to scale, by Engineers Surveyors Hawaii, Inc., dated October 13, 2000, identify the location of the dwelling and other building improvements that have been established on the subject TMK property. Furthermore, the site plan denotes the distances between the respective buildings and affected boundary lines. The site plan denotes the location of the existing fencing improvements along the boundary lines and fencing enclosures located on the subject TMK.
5. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated October 18, 2000 stating:

"This is to certify that the property taxes on the parcel listed above owned by Pyun Farms have been paid through the period ending December 31, 2000.

This clearance was issued by parcel(s) only and is for the purposes of Planning Department. This request was made by Brian Nishimura."
6. To date, no response or comment(s) to the Planning Department's memorandum dated November 23, 2000 was received from the Real Property Tax Office.

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7. The State Department of Health (DOH) memorandum dated December 27, 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 December 19, 2000, states in part:

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

Buildings shall conform to all requirements of code and statutes pertaining to building construction."

Subsequent to the receipt of the DPW memorandum dated December 19, 2000, a revised memorandum dated December 22, 2000 was received which states the following:

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

"Buildings shall conform to all requirements of code and statutes pertaining to building construction. (See attached comments from our Building Division).

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530."

The Department of Public Works (DPW) memorandum dated December 21, 2000, states in part:

"Our comments on the subject application are as follows:

We opposed the approval of the application for the reasons noted below.

"Electrical permit EH44159 for the livestock stalls was never finalized."

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Note: Copies of past building permits were secured from the DPW-Building Division in Hilo. It appears that the existing dwelling and other site improvements were established on the property before 1967 and no building permit to construct the existing fence improvements was required.

9. Proof of mailing a first and second notice was submitted on December 7, 2000. For the record the first and second notice was mailed on November 13, 2000 and December 1, 2000, respectively by Brian T. Nishimura, Planning Consultant and applicant.

No oral or written objections to the subject variance request were received from the surrounding property owners or public.

The building encroachment problems were discovered during the request to secure a permit to permit the proposed "after-the-fact" building improvements. The applicant submitted a recent survey map/site plan that identifies the location of the existing building improvements and fencing improvements. The site plan identifies the distance between building improvements and attendant roof eaves from the affected boundary lines. Portions of the recent building additions and attendant roof eaves were constructed and encroach into the respective yards, pursuant to the Zoning Code. It appears that the current owners were unaware that the building additions are subject to the Zoning Code's minimum yards and were prepared to meet only the minimum 3 feet side and rear setbacks pursuant to the county building code.

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(s) 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 current owners. Alternatives available to the applicant include the following: Removing the existing building encroachments, relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc., would be uneconomical at this time. The removal of the building encroachments and attendant roof eave(s) constructed by the previous and current owner(s) will disrupt the dwelling's structural integrity, building exposure, and other site improvements.

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The applicant, on behalf of the current owner(s), is honestly trying to address and resolve the building encroachments and building permit requirements. No evidence has been found to show indifference or premeditation by the applicant or current owner(s) to deliberately create 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 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 building location(s), building exposure, and the interior room circulation were established on the property before the Zoning Code was adopted in 1967. It appears that the building inspections of the premises throughout the life of the original building permits met all building code requirements and state statues up to 1967. The non-conforming building location(s), building exposure, and other property uses are limited and confine building expansion potential. It appears that the additional building improvements are necessary to address and meet family needs or satisfy other living requirements. The applicant and current owners became aware of the encroachment problems during an attempt to secure a building permit to recognize the building expansion and completed building improvements. The current owners are honestly trying to acknowledge existing non-conforming encroachments within the affected yards and legally obtain building permit(s) for the completed building improvements. It appears that the current owner(s) were not aware that building permit(s) were required for the dwelling's expansion and that the expansion and building improvements are further subject to minimum building yards and open space requirements.

The circumstances which permitted the existing building improvements to be built on the property are unique. The subject TMK property's land area and portions of buildings constructed within the minimum yard and open space requirements became "non-conforming" when the Zoning Code was adopted in 1967.

The portions of the existing building improvements within the affected yards are not physically and visually obtrusive from adjacent property or rights-of-way. It appears the recent building additions which encroach into the minimum Zoning Code yards do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and

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surrounding land patterns. It appears that portions of existing building improvements were built and established within the affected rear yard and established on the property before the advent and adoption of the Zoning Code in 1967. Inspection of the property during the life of original building permits issued before 1967 did not disclose any irregular building setback problems. Therefore, it is felt that those existing dwelling encroachments and recent building additions will not detract from the character of the immediate neighborhood or the surrounding property.

The subject variance application was acknowledged by certified letter dated November 23, 2000. Additional time to allow the applicant to address any concerns of the surrounding property owners and necessary to understand and study past building permit records.

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:

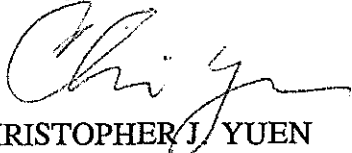
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, 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 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 13, 2000 to remain on the subject property. The applicant/owner(s) is/are required to confer with the Department of Public Works (DPW) and secure any building permits to recognize existing or allow further building improvements.

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4. Future building improvements and permitted uses 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

WRY:cps

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xc: Real Property Tax Office