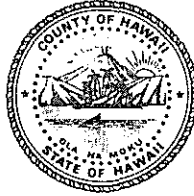


Stephen K. Yamashiro
Mayor



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 8524

March 15, 2000

Mr. William L. Moore
159 Halai Street
Hilo, HI 96720

Dear Mr. Moore:

VARIANCE PERMIT NO. 1101 (VAR 99-104)

Applicant: WILLIAM L. MOORE

Owners: WILLIAM L. MOORE, ETAL.

Request: Variance From Minimum Yards,
Pursuant to Chapter 25, Zoning

Ratified April 6, 1999

Tax Map Key: 2-3-022: 020, Lot 20

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. 1101 allows portions of a proposed building addition to be constructed within the affected side yard of Lot 20 with a minimum side yard of 4 feet and open space of 2.5 feet from the affected side boundary line in lieu of the minimum 8 feet side yard requirement and 4 feet clear space requirement as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, 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 to allow portions of the proposed building addition should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 16,090 square feet is Lot 20, Halai Hill Tract, Being a Portion of L.C. Aw. No. 387, part 4, Section 1, A.B.C.P.M., RP. On Confirmation No. 1946, No. 1, to D.B. Lyman, Punahoa 2, South Hilo, Hawaii. The property's address is 159 Halai Street.
2. The original dwelling was constructed on Lot 20 in 1941. The dwelling's location on Lot 20 was permitted prior to the adoption of the Zoning Code in 1967. The building permits for the existing building improvements were issued by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the original building construction plan to construct the original dwelling in 1941 and other subsequent site and building improvements have been reviewed and approved by the County and other affected government agencies. 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 October 19, 1999 by Martin Stuart, Ltd., identifies the existing dwelling and proposed additional building improvements on Lot 20. Additional driveway and landscaping improvements are proposed within and along the affected side and front boundary lines.
5. The letter dated October 16, 1999, submitted with the variance application states in part:

"The subject property consists of 16,090 square feet in area and is situated within the County's Single Family Residential-7,500 square feet (RS-7.5) zoned district and the State Land Use Commission's Urban District. The existing lot is trapezoidal in shape. The narrow portion, (sic) long Halai Street has a width of approximately 50 feet. This widens to approximately 117 feet along the eastern (makai) boundary.

There is an existing single family dwelling on the property that was constructed in approximately 1941. A portion of the existing dwelling is situated within the sideyard setback area. The garage and roof line extend to approximately two (2) feet from the side property line along the southern boundary. In addition, a corner of the existing dwelling is approximately seven (7) feet from the side property line.

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The dwelling conforms with the front and rear yard setback. The sideyards on the northern property line range between eight (8) and ten (10) feet. These improvements were constructed prior to the adoption of the County Zoning Code and therefore are pre-existing non-conforming structures.

While the front of the property is level (less than 5% slope) for a distance of between 40 and 75 feet from Halai Street, the parcel drops off steeply in an easterly (makai) direction with a slope exceeding twenty percent (20%). The soils within the subject property consist of the Hilo Series which are well-drained silty clay loams. These soils formed in a series of volcanic ash layers. According to the Soil Conservation Service's Soil Survey, Island of Hawaii, these soils have "low bearing capacity; high compressibility; low shear strength; subject to sliding, high shrinkage; high organic-mater content."

Purpose and Nature of Request

The purpose of the variance is to allow the construction of a new carport and storage area and the enclosure of the existing garage and entry and conversion to a family room. These improvements are proposed with a minimum side yard of four (4) feet and open space of 2-1/2 feet (30-inches) from the affected side property line in lieu of the minimum of eight (8) foot side yard requirement and four (4) foot clear space requirement as provided in the Zoning Code, Chapter 25, Article 5 (sic) Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division 4, Section 25-4-44, Permitted Projections into Yards and Open Spaces, respectively.

There are special or unusual circumstances applying to the subject property which existing (sic) to a degree which deprives me 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 property.

This special or unusual circumstance relates to the configuration and steep slope of the subject property. While the property is relatively large (over 16,000 square feet), the trapezoidal shape limits the amount of developable land along Halai Street. At the same time, this area is the only buildable area within the property. The balance of the property east (makai) of the existing dwelling is extremely steep. This in combination with the ash soils, which have severe structure limitations, renders this area effectively unbuildable.

Accordingly, the only area for any expansion is within the area between the existing dwelling and Halai Street.

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There are no reasonable alternatives that would resolve the difficulty. We have considered expanding the dwelling an easterly (makai) direction. However, the steep slope and unstable soils limit this option. This is based on an opinion from a soils engineer who concluded that the new construction would be subject to settling and slippage.

A second option considered was to locate the new carport along the northern property line. However, a standard twenty (20) foot carport would extend into the front yard setback area. In addition, there is a steep drop along the northern property line which limits development options.

In addition, a major goal of the carport addition and conversion of the existing garage is to maintain the architectural integrity of the existing structure. In order to accomplish this, we wanted to integrate the addition with the roof and building lines of the existing structure.

Together, these constraints limited the development options to the requested development plan. This would involve enclosing the existing garage and converting it to a family room to provide additional living and entertainment area for our children. In addition, it would provide for the construction of a new carport and storage area, extending the existing building and roof lines along the southern property line.

The request variance is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan and will not be detrimental to the public welfare or cause substantial, adverse effect to the area's character or adjoining properties.

The purpose of the Single Family Residential (RS) zoned district is to provide for "lower or low and medium density residential use, for urban and suburban family life." The subject request is consistent with this purpose. It will provide for an enhanced residential dwelling meeting the existing and future needs of my family. It will be designed to be in keeping with the neighborhood character.

The proposed improvements will not caused (sic) any adverse impact to the adjoining property. While there is an existing dwelling to the south of the subject property. This property is buffered by an existing hedge within the subject property and a new hedge that has been installed within this adjacent property. In

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addition, the enclosure of the existing garage and construction of a new carport may in fact reduce noise levels at this adjacent residence by relocating the cars away from the bedrooms next to the existing open garage area.

The proposed request is not inconsistent with the General Plan which states as a goal to "maximize choice of single-family lots and/or housing for residents of the County."

6. The Department of Finance-Real Property Tax Office memorandum dated February 2, 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 December 23, 1999, states in part:

"The Department of Health has no concerns to this variance application if the subject dwelling is serviced by sewer. If an individual wastewater system is being utilized, this, system must maintain minimum setback requirements."

8. The Department of Public Works (DPW) memorandum dated February 3, 2000, in the subject variance file states in part:

"We have reviewed the subject application forwarded by your memo received February 1, 2000 and oppose the approval of the application for the following reasons.

1. All new building construction shall conform to current code requirements. U.B.C. Section 104(b) additions, alteration, and repairs.
2. Building permit #910379 for the subject project was never finalized.
3. The minimum setbacks shall be maintained as followed: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.
4. No openings in the exterior wall are permitted are permitted (sic) less than 3 feet from the property line.

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5. Roof over has less than 3'-0" from the property line shall be of 1-hour construction.
6. Any new driveway connection to Halai Street shall conform to Chapter 22, streets and Sidewalks, of the Hawaii County Code and may require a permit."
9. The outstanding building permit (BP NO. 910379) cited in memorandum dated February 1, 2000 was closed on February 25, 2000 by the DPW-Building Division.
10. Proof of serving first and second mailing of notice to the owners and lessees of record of all lots within three hundred feet of the subject TMK parcel were submitted by the applicant.

The applicant submitted a site plan, which identifies the location of an existing dwelling and proposed building improvements. This site plan submitted identifies the distances between the existing dwelling and proposed building addition from the affected side boundary line. Portions of the original dwelling and roof eave were originally permitted and constructed within one of the property's two side yards. Portions of the original dwelling constructed within the affected side yard to the north were constructed prior to the adoption of the Zoning Code in 1967. Therefore, those portions of the original dwelling and roof eave built within the affected side yard are non-conforming building improvements.

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 of 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: Building the proposed building addition within the correct building envelope prescribed by the Zoning Code, and other similar design alternative, etc. and removal of existing non-conforming building encroachments or the re-sitting, redesign, and remodeling, etc. of the original dwelling would be economically unreasonable and may disrupt other existing site improvements.

The applicant/current owners are trying to maintain the original building geometry and improve existing dwelling to meet current family requirements.

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The Planning Department acknowledges there may be other design or building and landscaping alternatives available to the applicant/owners recited above. However, these designs and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present applicant/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 original dwelling's location was constructed on the property in 1941. The current applicant/owners have acknowledged and cited land and existing building limitations and limited building options and will comply with other current building permit requirements. The existing permitted building additions and further planned building additions, building color(s), and further landscaping materials and scale of said building additions and related landscaping improvements will consider and respect existing neighboring building and landscaping.

The circumstances to permit portions of the original dwelling to be sited and constructed on the subject property are unique. Portions of the original dwelling constructed within one of the two side yards were permitted in 1941 and are now deemed to be non-conforming building improvements. The applicant plans to install additional landscaping materials and coordinate related landscaping improvements within the affected front and affected side yards to buffer and mitigate the planned building improvements and uses from the adjacent properties and neighborhood. The original building encroachments within the affected side yard are not physically and visually obtrusive from the existing adjacent parcels and right-of-way. It appears the existing 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 portions of the original dwelling that were built and established within one of the property's two side yards nearly 60 years ago have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the proposed building additions and further proposed landscaping improvements will not detract from the character of the immediate neighborhood or the subdivision. Portions of the original 1941 dwelling were established within one of the two side yard prior to the adoption of the 1967 Zoning Code. Inspection of the property during the life of the original and other building permits issued before 1967 and subsequent building permits issued after 1967 to date by the county and other affected government agencies did not disclose any irregular building setback problems.

The subject variance application was acknowledged by certified letter dated December 20, 1999. Additional time to review the subject variance application by the participating agencies and copies

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of past building permit records issued to the previous owner were required. The status of open BP NO. 910379 was addressed by the applicant and closed on February 25, 2000 by the DPW-Building Division.

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.

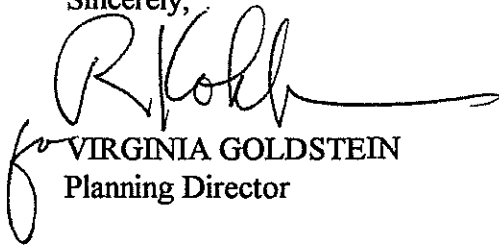
This variance request is approved subject to the following conditions:

1. The applicant/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is March 14, 2000.
2. The approval of this variance is only from the Zoning Code. The applicant/owners, 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 actor omission of the applicant/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 original dwelling and the proposed new building additions on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yard and open space requirements. The approval of this variance allows the proposed new building additions identified on the plot or site plan submitted with the variance application or approved detailed building construction plans and are subject to State law and County ordinances pertaining to building construction and building occupancy.
4. All current building permits shall be addressed and closed prior to future conveyance of the subject property and/or changes of title to the subject property. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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:gp
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c: Real Property Tax Office