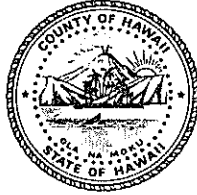


Stephen K. Yamashiro  
Mayor



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 5036

July 18, 2000

Ms. Joanne V. Baptiste, Realtor  
CENTURY 21  
586 Kanoelehua Avenue, No. 100  
Hilo, HI 96720

Dear Ms. Baptiste:

**VARIANCE PERMIT NO. 1140 (VAR 00-42)**  
**Applicant: JOANNE V. BAPTISTE**  
**Owners: ZELJA FIZULIC, ETAL.**  
**Request: Variance from the Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 3-6-005:046**

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. 1140 allows portions of an existing dwelling to remain on the subject lot, "AS BUILT", with a minimum front yard of 26.17 feet in lieu of the minimum 30 feet front yard as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

#### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum 30 feet front yard should be approved based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 62,431 square feet +/- is a Portion of Lot 24, Being Grant 4596, Waipunalei Homesteads, North Hilo, Hawaii.

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The property is zoned Agricultural (A-20a) by the County.

2. It appears the existing building improvements were constructed under two (2) building permits nearly 8 years ago. The Department of Public Works (DPW) issued Building Division in Hilo the building permits, B No. 912827 for a dwelling and B No. 930217 for an open carport, in 1992 and 1993, respectively,, Building Division in Hilo to the previous owner.
2. It appears the site plans attached to the detailed building construction plans for the original dwelling and open carpet building(s) 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. 912827 and B No. 930217 were opened on, December 11, 1991, and February 9, 1993, respectively, and closed on June 24, 1992, and May 19, 1993, respectively, by the DPW-Building Division.
4. The site plan drawing, drawn to scale and dated May 8, 2000, by Independent Hawaii Surveyors, identifies the existing dwelling encroachments into the affected front yard. Portions of the existing dwelling encroach 3.83 feet into the front yard.
5. The applicant's attachment, dated May 22, 2000, states in part:

“Enclosed is Variance Application for above property. I represent the owner of this property, Mr. Fizulic. The property is currently in escrow and upon completion of the enclosed survey, it was discovered that the house and carport encroach into the setback. Mr. Fizulic was not the builder of this home, nor was he aware of the encroachment when he purchased it.

The County Building Department finaled all building permits on this home and they apparently, were unaware of the encroachment as well.

We feel there are no other reasonable alternatives at this time to resolve the situation. We are, therefore, applying for subject variance.

We also believe the approval of this variance would be consistent with the general purpose of the zoning district, the intent and purpose of the zoning and subdivision codes, and the County General Plan and will not be materially detrimental to the public welfare or have an adverse impact on the areas character or adjoining properties.”

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6. The Department of Public Works (DPW) memorandum dated June 15, 2000, in the variance file states in part:

"We have reviewed the subject application forwarded by your memo dated May 30, 2000 and have no comments or objections to the request."

7. The State Department of Health (DOH) memorandum dated June 14, 2000, in the variance file states in part:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems need to be maintained."

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's representative submitted copies of the first notice and second notice and mailing receipts showing that first and second notice was mailed to the designated surrounding property owners or lessees.

The Planning Department received no verbal or written objections to the variance application.

The applicant and owner submitted site plan showing the location of the existing dwelling and open carport located on the property. The site plan dated May 8, 2000, identifies the distance between the dwelling encroachment and the affected front property line. Pursuant to the Zoning Code, portions of the existing dwelling encroach 3.83 feet into the respective 30 feet wide front yard(s). Portions of the existing dwelling's "roof eaves" and the open carport constructed within the property's front yard are "permitted projections" and require a minimum 14 feet between the permitted projection and affected front property line.

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.

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### 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 yard 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 would be economically unreasonable and may disrupt the building's design and other existing building improvements.

The applicant/owner(s) are honestly trying to resolve the recent building encroachment problem. No evidence has been found to show indifference or premeditation by the previous owner to deliberately or intentionally allow the building encroachment problems to occur during building construction. The building permits to permit the dwelling and open carport were closed by the DPW. The encroachments were discovered during a recent sale of the property.

The Planning Department acknowledges there may be other design or building alternatives available to the current 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. Building inspections of the premises, during building construction and throughout the life of the building permits issued to the applicant(s) or owner(s) did not disclose any building setback irregularities. The current owner(s) were not aware of any encroachment problems until the modern survey was performed in conjunction with the sale of the property.

The circumstances, which permitted the existing building improvements to be built on the property and timing to address the building encroachment problems, are unique. The existing building encroachments have been built within the existing front yard and were completed prior to the sale of the property to the current owner(s). The existing building encroachments are not physically and visually obtrusive from the existing rights-of-way or the adjacent properties. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, pasture 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,

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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 front yard were caused by an unintentional mapping and building discrepancies or misinterpretation of the minimum yards during building construction by previous owner in the early 1990s. Inspection of the property during the life of the building permits to allow the existing buildings 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 located on the subject property will not meet Chapter 25, the Zoning Code's, minimum front yard requirements. The approval of this variance allows the existing dwelling encroachments within the respective front yard identified on the plot or site plan dated May 8, 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. No enclosure of the open carport is permitted unless all Zoning Code requirements are met.

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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

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c: Real Property Tax Office