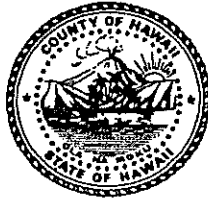


Harry Kim
Mayor



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 1025

February 16, 2001

Mr. Jackie D. May
c/o CENTURY 21
HOMEFINDERS OF HAWAII
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. May:

VARIANCE PERMIT NO. 1189 (VAR 00-85)

Applicant: JACKIE D. MAY

Owners: WILLIAM HIGA, ET AL.

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

Tax Map Key: 1-5-058:043

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. 1189 allows portions of the existing dwelling and attached open deck/stairs located on the subject property, pursuant to a site plan dated August 24, 2000, to remain within the affected side yard and affected open spaces "AS BUILT" with a minimum 5.49 feet side yard and 5.49 feet corresponding open space from the respective side boundary line, in lieu of the minimum 15 feet side yard and 10 feet open space requirements, respectively, as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), (1), (B), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

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FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum side yards and open space requirements should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 0.61 acre is Lot 487, Block 10, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii. The property's address is 15-889 Paradise Ala Kai Drive.

The property was zoned Agricultural (A-1a) by the County in 1967. It appears that the subject property was subdivided before the Zoning Code, Chapter 25, of the Hawaii County Code was adopted in 1967. The subject property's average width and land area are below the minimum requirements for the A-1a zone. The property is deemed "non-conforming" with respect to minimum average width and land area.

The subject TMK property is within an area designated Special Management Area (SMA). The existing dwelling and affected building improvements are SMA exempt.

2. The applicant's representative submitted a transmittal letter, dated October 6, 2000, which states in part:

"Enclosed is a Variance Application for the above property. I represent owners of this property, William and Lillian Higa. Upon completion of the enclosed survey, it was discovered that the deck encroaches into the setback.

The Higa's had the home built by a licensed contractor and the County Building Department finalled all building permits on this home and they and the owners apparently, were unaware of the encroachment as well. To modify and remodel would be extremely costly and detract from building appearance.

We feel there are no other reasonable alternatives at this time to resolve the situation. We are, therefore, applying for subject variance. The property is currently for sale and the owners want to clear this matter up before any sale of the property.

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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 area's character or adjoining properties."

3. It appears the site plans attached to the detailed building construction plans for the building permits to construct the existing dwelling and other related site improvements (e.g. driveway location, cesspool) were reviewed and approved by the Planning Department and affected government agencies.
4. The site plan drawing prepared by The Independent Hawaii Surveyors, drawn to scale and dated August 24, 2000, identifies the location of the existing dwelling, deck/stairs and location of other related building and site improvements. The site plan denotes the distances between the respective dwelling/deck and affected side boundary line.

Note: The site plan does not denote or identify the location of an existing Independent Wastewater System (IWS) or cesspool on the property.

For the record, a recent site inspection was conducted of the area to view the subject building encroachments and surrounding site improvements by Planning Department staff.

5. The Real Property Tax Office memorandum dated October 31, 2000, states in part:

"We note that the plot survey shows two dwellings. Our records indicate that the "one story residence" is 24x60 structure containing a 24x24 carport, and 8x14 storage area, a 16x14 H.T. water tank, and 24x24 recreation room. Building Permits appear to have been taken out for these uses."

"Current Real Property taxes are paid through December 31, 2000."

6. The State Department of Health (DOH) memorandum dated November 8, 2000, in the subject variance file states:

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

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7. The Department of Public Works (DPW) memorandum dated November 15, 2000, states in part:

"We have reviewed the subject application forwarded by your memo dated October 23, 2000 and recommend approval subject to the following condition.

Rectify electrical permit E000831 for the subject dwelling that was never finalled."

Note: It appears that four (4) building permits were issued (B.P.) Nos. 901434, 910598, 930837, and 941153) to construct the existing dwelling and other site improvements. County building permit records show that all four (4) building permits were closed by the DPW-Building Division.

Pursuant to a recent site inspection only one (1) dwelling was constructed on the property and no building permit to construct the existing wood fence along the affected boundary line is required by the County. It appears that the existing wood fence is within the subject property boundaries.

8. Proof of mailing a first and second notice was submitted on February 15, 2001. For the record the first and second notice was mailed on October 27, 2000 and November 6, 2000, respectively by the applicant.

No oral or written objections were received by the Planning Department.

The building or wooden deck/stair encroachment problems were discovered during the sale of the subject property and escrow. The applicant submitted a recent survey map/site plan that identifies the location of the existing dwelling and fencing improvements. The site plan identifies the distance between portions of the dwelling and deck and stair/roof eaves from the affected side boundary line. Portions of the existing dwelling, deck, and attendant stair improvements were constructed and encroach into the respective side yard. The current owners were unaware of any building encroachments prior to the decision to sell the property and completion of a survey plan identifying the location of existing building improvements.

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 owner/applicant 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 current owners. Alternatives available to the applicant include the following: Removing the existing building encroachments, relocating the deck and stairway 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 current owner(s) may disrupt the dwelling's structural integrity and the relationship or circulation between the dwelling and detached garage.

The applicant, on behalf of the current owner(s), is honestly trying to resolve building encroachments that were established on the property by the contractor and owner(s). No evidence has been found to show indifference or premeditation by the current owner(s) to deliberately create or intentionally allow the building encroachment problems to occur. The building encroachments include and consist of portion of the exterior wooden deck and stairway. The deck and stairway encroachments are not enclosed or considered to be living areas.

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 deck were constructed under a series of building permits issued to the current owner(s) and constructed by licensed contractor(s). It appears that the building inspections of the premises, during building construction and throughout the life of four (4) building permits did not disclose any building setback irregularities. The applicant and current owners became aware of the encroachment problems during the decision by the current owners to sell the property. The current owners are trying to resolve building encroachment problems that were disclosed after a modern survey map was presented for escrow purposes.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within a side yard on a non-conforming sized property.

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The existing building encroachments are not physically and visually obtrusive from adjacent property or existing rights-of-way. It appears the 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 the existing building (dwelling) encroachments on the property and within the affected side yard were the result of mapping and building discrepancies or misinterpretation of the minimum yards during building construction by the contractor and the current owner(s). Inspection of the property during the life of the building permits issued by the County or other agencies did not discover any building encroachment or disclose any irregular building setback problems. Therefore, it is felt that the existing dwelling encroachments will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by certified letter dated October 23, 2000. The applicant's representative agreed to an extension of time to February 28, 2001 to allow the affected and surrounding property owners to comment on the subject 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 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, dated August 24, 2000, to remain on the subject property.

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The applicant or owner(s) shall contact the Department of Public Works (DPW)-Building Division to address and close electrical permit E000831 prior to any transfer of title.

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