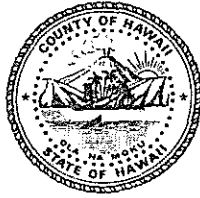


Harry Kim
Mayor



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 2905 2892

June 21, 2001

Ms. Connie J. Maple
1160 Lei Hinahina Street
Hilo, HI 96720

Dear Ms. Maple:

VARIANCE PERMIT NO. 1204 (VAR 01-031)

Applicant: CONNIE J. MAPLE
Owner: CONNIE J. MAPLE
Request: Variance From the Minimum Yards,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 2-5-059:022

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. 1204 allows portions of the existing dwelling and attendant roof eaves, "AS BUILT" to remain 1.73 feet within the affected side yard. The proposed 8.27 feet side yard or distance between that existing side boundary line and the exterior wall of the dwelling is in lieu of the minimum 10 feet side yard requirements for this property, pursuant to the Hawaii County Zoning Code. The variance request is from Chapter 25, the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (2), (B).

FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 16,626 square feet, is Lot 205 of the Ainako Subdivision, Punahoa 2nd, South Hilo, Hawaii. The subject TMK property is zoned Single-Family Residential (RS-15) by the County and is designated Urban by the State Land Use Commission.
2. The applicant submitted the variance application form, other attached variance submittals, and \$250.00 filing fee check on April 9, 2001. The applicant did not submit any other detailed or original building construction plans or other building permit documentation with the variance application.
3. Building permit records indicate that the existing dwelling was constructed under a series of 4 building permits (B NO. 790652, B NO. 793281, B NO. 80007, and B NO. 801940) issued to John Maple and Steve Zoll. Pursuant to County building permit procedure(s), it appears that the site plan(s) attached to the detailed building construction plans submitted with the building permit application(s) were reviewed and approved by the Planning Department and other affected government agencies. The building permits were issued by the DPW and it appears that the required building inspections were conducted by DPW-Building Division and by representatives from other affected government agencies of all building improvements on the property. The aforesaid 4 building permit(s) issued by the DPW were closed.
4. The site plan or "MAP SHOWING EXISTING CONDITIONS", drawn to scale (reduced) and dated February 22, 2001, by The Independent Hawaii Surveyors identifies the location of the existing "TWO STORY WOOD HOUSE" and other related site improvements on the subject and existing TMK property(s). The survey map identifies the location of the building envelope created by the minimum building yards pursuant to the Zoning Code.

It appears that a corner or portions of the dwelling's enclosed living areas encroach 1.73 feet into and within one (northerly) of the property's 2 side yards. The map or site plan does not show existing topography or describe existing land terrain. However, the site plan identifies areas covered by "concrete drive", "concrete"(walkways or open patios?), and "block walls" within the affected yards. The existing roof eaves appear to meet the minimum 5 feet clear space requirements.

5. The applicant submitted the following statements and reasons:

"The house was sited 1.73 feet into the side yard setback when constructed in 1979.

The owner has resided on the property since 1979 and was never made aware that this problem existed.

The only alternative available to the owner applicant would be to literally cut away one portion of the home. To require this remedy would deprive the owner of her property rights and quiet enjoyment.

There are no other reasonable alternatives that would resolve the difficulty.

The property line is presently covered with palms and shrubs that almost totally obscure the subject property from the nearest neighbor. The problems have created no problems or disagreements with next door neighbors.

The variance if granted 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. The variance, if granted, would not be materially detrimental to the public welfare or cause any adverse impact of any kind to the area's character or to the adjoining properties.

The owner respectfully requests this variance be granted and asks for your careful consideration of the contractor's initial over sight."

6. The applicant's variance application submittal did not include a certification of clearance from the Director of Finance that the real property taxes and all other fees relating to the TMK property were paid. This requirement or any real property taxes due or other fees due the County will be paid by the applicant/owner(s) prior to the sale of the property or any changes in property title and will be included and addressed by the applicant and by the variance condition(s) cited below.

7. The State Department of Health (DOH) memorandum dated May 8, 2001, in the subject variance file states:

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

8. The Department of Public Works (DPW)-Building Division memorandum dated May 1, 2001, states in part:

"We have no comments or objectives to the application."

9. The applicant submitted an affidavit/statement dated April 11, 2001 and attached list with a postal receipt dated April 12, 2001. This affidavit together with attached postal receipt was received by the Planning Department on April 16, 2001. Pursuant to the Planning Department's acknowledgment letter (certified) dated April 30, 2001 and applicant's affidavit received on April 16, 2001, it appears that only one notice (affidavit dated April 11, 2001) describing the variance request was mailed to the surrounding property owners on April 16, 2001.

No oral or written objection letter(s) were received by the Planning Department.

The applicant submitted a survey map/site plan, drawn to scale (reduced) and dated February 22, 2001, which identifies the location of the existing dwelling and other site improvements which have been built and established on the subject TMK property. This map, drawn to scale, identifies the location of the existing dwelling, carport, and eave improvements "AS BUILT" and the respective distances between said improvements and the existing side boundary line.

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.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the current applicant/owner. Alternatives available to the applicant include the following:

- 1) Remove the existing building encroachments identified within the side yard as shown and identified on the site plan dated February 22, 2001 within the affected side yard. This immediate correction or removal of these encroachments, constructed within the side yard, would seem unreasonably harsh to cure an approximated 2 feet corner encroachment. The 8.27 feet side yard setback will be preserved and the building location and encroachment problem did not become an issue until the property was surveyed due to the need to sell the house and other family circumstances. The removal of the dwelling encroachments constructed within the affected side yard would reduce the value of the existing dwelling and be economically unreasonable at this time. The removal of these encroachments could disrupt the dwelling's design and aesthetics, affect the dwelling's existing foundation and structural integrity, disrupt the relationship between the existing dwelling and the adjacent property, and affect existing walls and other landscaped improvements, etc. Furthermore, the cost to redesign and relocate the exterior building wall(s), and any modification to the exterior character of the existing dwelling may disrupt its relationship or standing with other existing dwelling improvements nearby and within the immediate neighborhood.
- 2) Allow the encroachments to remain by variance and subject to variance conditions that the applicant and/or subsequent owner(s) maintain existing landscaping improvements within the affected side yard as a landscape buffer to insure that the existing building encroachments are screened from the adjacent property (LOT 204) and existing right-of-way.

The applicant/owner, is trying to resolve dwelling encroachment problems that were built and established within the affected side yard.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant and current owner 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 owner when a more reasonable alternative is available by the granting of the subject variance request.

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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 other site improvements were constructed under a series of building permit(s) issued to other(s), beginning in 1979. It appears that the building inspections of the original premises, during building construction and throughout the life of the original building permit and subsequent other permits were legal and posed no irregularities within the affected side yard and minimum required open spaces. The applicant and owner became aware of the encroachment problems during a recent decision to sell the property.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within one of the two existing side yards. Pursuant to the applicant there are existing landscaping improvements and other site improvements within the affected side yard and located elsewhere on Lot 205. It appears that the previous owner has introduced and planted additional trees and other ground plantings within the affected side yard and open spaces between the dwelling encroachments and the common side boundary line between the subject TMK property, Lot 205 and Lot 204. The existing planted vegetation or introduced planting materials on Lot 205 will act as a landscape buffer between those building encroachments identified on the submitted site plan and these landscape improvements will continue to screen these encroachments from Lot 204. A variance condition to require the retention and maintenance of these existing landscape improvements within the affected side yard and open space on the subject TMK property will be imposed to insure that a "a sense of place" and privacy between the Lot 205 and Lot 204 is perpetually maintained. Furthermore, no further exterior improvements to the existing dwelling are planned or permitted.

It is felt that the existing dwelling or proposed building encroachments will not be physically and visually obtrusive from the existing adjacent property Lot 204 or visible from the existing rights-of-way or restrict further development of Lot 204. And, it appears the building encroachments will not depreciate or detract from the character of the surrounding neighborhood and the existing and surrounding land patterns. It appears the existing building (dwelling) encroachments on Lot 205 and within that lot's affected side yard were the result of mapping and building discrepancies or misinterpretation of the minimum yards during building construction by the person or persons in 1979. Inspection of the property during the life of the original building permit issued in 1979 and other building permits issued by the DPW in 1980s did not discover any building encroachment or disclose any irregular building setback problems on Lot 205. It appears that the 22 year old dwelling improvements are being addressed pursuant to the need and desire by the current owner to sell the property due personal reasons and family circumstances. There are existing landscaping improvements

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between Lot 204 and Lot 205. These existing landscape improvements will continue to act as a "landscape buffer" to insure privacy and separation between the subject TMK property, Lot 205, and the adjacent lot and TMK parcel, Lot 204, TMK: (3) 2-5-059:021. Therefore, it is felt that the existing dwelling encroachments on Lot 205 can remain and will not detract from the character of adjacent property and with other surrounding subdivided property.

The variance application form, attached variance submittals, and filing fee received on April 9, 2001 were deemed complete by the Planning Department on April 9, 2001. The subject variance application was acknowledged by the Planning Department's certified letter dated April 30, 2001. Additional time to study the applicant's variance application form and map submittals, obtain copy(s) of past building permits issued by the DPW, and understand the circumstances to permit the existing dwelling encroachments was necessary.

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. The effective date of this variance is **June 13, 2001**.
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 original dwelling and attendant roof eaves 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 February 22, 2001, "AS BUILT", to remain on the subject property. The existing landscape improvements and ground cover located immediately adjacent to the building encroachments shall be relocated or maintained on the affected lot(s) or

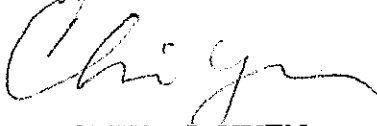
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property. No further building additions to increase or expand the dwelling within the affected side yard(s) will be permitted. Additional landscape materials (additional native trees or the like, additional ground cover, and other similar landscape rock wall/fences improvements) may be introduced and placed within the affected side yard and open spaces adjacent to the building encroachments and within the affected side yard and open spaces to buffer the existing dwelling encroachments from permitted uses or the existing dwelling improvements located on the adjacent property, Lot 204, or TMK: (3) 2-5-059:021. All permitted landscaping materials and related landscaping improvements located on Lot 205 or the subject TMK property shall be maintained in a healthy and attractive state.

4. The applicant/owner(s) or authorized representative shall pay any real property taxes due the County. The current owner(s) shall be responsible to close or finalize all DPW building permits prior to selling the property or prior to any changes in property title or ownership.
5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to subdivision, 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
DPW-Building Division (Hilo)