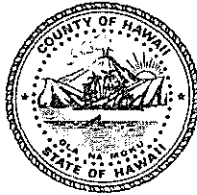


Harry Kim
Mayor



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 2885

June 21, 2001

Mr. Dan Banks
1667 Wailuku Drive
Hilo, HI 96720

Dear Mr. Banks:

VARIANCE PERMIT NO. 1205 (VAR 01-032)

Applicant: DAN BANKS
Owner: DAN BANKS
Request: Variance From the Minimum Yards and Permitted Projections Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning
Tax Map Key: 1-8-067:001, Proposed Lot 1-C, (SUB 01-018)

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. 1205 allows portions of the existing and original dwelling and attendant roof eaves, "AS BUILT" to be located on proposed Lot 1-C (SUB 01-018; Consolidation/Resubdivision action of original lot(s): Lot 1-A and Lot 1-B). The proposed 11.62 side yard and 7.48 open space from the "new" common side boundary line is in lieu of the minimum 15 feet side yard and minimum 10 feet open space 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 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

005580

JUN 22 2001

FINDINGS AND RECOMMENDATION

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property or affected area (proposed Lot 1-C) contains 21,922 square feet and consists of a Portion of existing Lot 1-A and existing Lot 1-B, being a Portion of Grant 4032 to Andrew Anderson, and Part "B" of Lot 94, Olaa Reservation Lots, Olaa, Puna, Hawaii. The existing lot(s), Lot 1-A and Lot 1-B, are non-conforming sized TMK property(s) that were zoned Agricultural (A-5a) by the County in 1967. It appears that the existing or original dwelling was established on and upon the existing common boundary line between the existing lot(s) in 1962. The dwelling has straddled upon the common boundary line and existing lot(s) for over 39 years.

The applicant/owner submitted a consolidation/resubdivision application (SUB 01-018) of the existing parcel(s) on January 21, 2001. The application was deferred pending resolve of the minimum yard requirements between the existing portion of the dwelling and proposed lot line.

2. The applicant submitted a transmittal letter dated April 11, 2001, variance application form, other attached variance submittals, and \$250.00 filing fee check on April 16, 2001. The applicant's transmittal letter purports and states "The existing dwelling was constructed in 1962 before the code was enacted on September 21, 1966 that included "set-back" criteria" or minimum yard and open spaces pursuant to the Hawaii County Zoning Code.

The applicant/ current owner did not submit any other detailed or original 1960's building construction plans or other documentation with the variance application.

3. Subsequent to the construction of the dwelling on the existing parcels in the early 1960's, county permit records indicate that 2 other recent building permits (B NO. 8300618 and 010013) were issued to the property in 1983 and 2001 by the Department of Public Works (DPW)-Building Division. Both permits were closed by the DPW. It appears that any site plan(s) attached to the detailed building construction plans for the building permit(s) were reviewed and approved by the Planning Department and other affected government agencies. It appears that the required building inspections were conducted by DPW-

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Building Division and by representatives from other affected government agencies of all building improvements on the property.

4. The site plan or "MAP SHOWING EXISTING CONDITIONS", drawn to scale and dated January 24, 2001, by The Independent Hawaii Surveyors identifies the location of the dwelling, carport, and other related site improvements on the subject and existing TMK property(s). The survey map identifies the location of the proposed building side yard and open space conditions.

This recent site plan does not denote or clearly establish which portions of the existing dwelling were built or established on the respective parcel(s) prior to 1967.

Photographs/colored prints of the existing dwelling and affected property area were submitted by the owner/applicant. Furthermore, the recent site plan does not show existing topography, original natural vegetation, and other introduced planting improvements located on the property. The colored prints describe existing dwelling improvements and presence of landscape planting improvements within the affected side yard(s) and proposed driveway area.

5. The applicant's transmittal letter, dated April 11, 2001, includes facts and information cited above and is hereby included as reference and made part of this variance permit. (Please refer to the applicant's 3 page letter/statement dated April 11 2001 in subject variance file).
6. The Department of Finance-Real Property Tax memorandum dated March 13, 2001 (sic), in the subject variance file states in part:

"There are no comments at this time"

"Current Real Property taxes are paid through June 30, 2000."
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."

Note: The location of the existing cesspool or IWS (Independent Wastewater System) originally constructed in 1962 or 1963 will be shown on the Final Subdivision Plat Map and/or addressed prior to Final Subdivision approval of application (SUB 01-018).

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

"Our comments on the subject application are as follows:

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

The electrical permit EH61909 for the subject property was never finalized."

The Department of Public Works(DPW)-Engineering Division memorandum dated May 2, 2001, states in part:

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

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

We oppose the approval of the subject application because the subject property's electrical permit (EH91909) has not received final approval."

9. The applicant submitted a transmittal letter dated May 3, 2001 and attached list with a postal receipt dated May 3, 2001 on May 15, 2001 to the Planning Department. Pursuant to the Planning Department's acknowledgment letter (certified) dated April 30, 2001 and applicant's letter received on May 15, 2001, it appears that only one notice of the variance application was mailed to the surrounding property owners.

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

The applicant submitted a survey map/site plan, drawn to scale and dated January 24, 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 the existing building improvements and the "new" boundary line.

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It appears that the original dwelling straddles the existing common boundary between Lot 1-A and Lot 1-B and that allowing the original placement of the dwelling on the existing parcel(s) was an "oversight" by the affected agencies in 1962.

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: Removing the portions of the existing building encroachments or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code; and, other similar design alternatives, etc. The removal of those portions of the existing dwelling and roof eave encroachments constructed prior to approving the subdivision would be economically unreasonable at this time. The existing dwelling's design, structural integrity, and the relationship between the original dwelling and other recent building additions would be disruptive.

The applicant, is honestly trying to resolve other building encroachment problem which were built and established on the property pursuant to the building permit issued to the previous owner. No evidence has been found to show indifference or premeditation by the previous or current owner to deliberately or intentionally allow or create the building encroachments to occur in 1962.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant/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.

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 valid building permit issued to the previous owner in 1962 on property subdivided prior to the adoption of the Subdivision and Zoning Codes in 1966 and 1967. It appears that the building inspections of

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the original premises, during building construction and throughout the life of the original building permit were legal and posed no irregularities within the affected side yard and minimum required open spaces. The applicant and owner became aware of the original "oversight" and further yard encroachment problems during agency review of the applicant's request to consolidate and reconfigure the existing lot(s) into Lot 1-C and Lot 1-D.

The circumstances which permitted the existing building improvements to be built on the existing lot(s) are unique. The existing building encroachments have been built upon a common boundary line between the existing TMK parcel(s) and a conflict with the subsequent adoption of the Zoning and Subdivision Code(s). Pursuant to the recent pictures taken of the existing site improvements there are existing trees, shrubs, lawn, and other vegetation growing on the property. It appears that the current owner will introduce additional planting materials between the dwelling encroachments and new proposed common side boundary line. The existing and introduced vegetation will act as a landscape buffer between the building encroachments on proposed "Lot 1-C" and the new proposed common side boundary line shared with proposed Lot 1-D. A variance condition to require the retention and maintenance of the landscape buffer improvements within the "new" side yard and open space on the proposed Lot 1-C will be imposed to insure that a "a sense of place" is preserved and that vehicular ingress/egress via and within Lot 1-D's driveway is safe. Furthermore, no further expansion of the existing dwelling's footprint within the "new" side yard is 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 or visible from the existing rights-of-way or restrict development of proposed Lot 1-D. For nearly 39 years, the existing building encroachments have not depreciated or detracted from the character of the surrounding neighborhood, and the existing and surrounding land patterns. It appears the existing building (dwelling) encroachments on the existing TMK property(s) and within the existing side yard(s) were the result of mapping and building discrepancies or misinterpretation of the minimum yards during building construction by the person and government agencies in 1962. Inspection of the property during the life of the original building permit by government agencies in 1962 did not discover any building encroachment or disclose any irregular building setback problems. The present location of the existing 39 year old dwelling is being addressed pursuant to the proposed consolidation and resubdivision request. The resulting reconfiguration of the existing Lot 1-A and Lot 1-B will result in a better lot layout (Proposed Lot 1-C and Lot 1-D) and enable the applicant and owner to better use and further develop the resultant reconfigured lot(s). The current owner will maintain or may introduce further landscaping improvements within the current TMK property(s). These existing landscape improvements will act as a "landscape buffer" to insure privacy and separation between the reconfigured lots. Therefore, it is felt that the unusual circumstances and interpretation of

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existing/proposed dwelling encroachments will be addressed by the proposed consolidation/resubdivision application and not detract or change the character of the immediate neighborhood.

The subject variance application was acknowledged by certified letter dated April 30, 2001.

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 help rectify a past encroachment problem and 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** and is subject to the applicant complying with all conditions of a pending consolidation/resubdivision application (SUB 01-018) submitted to the Hawaii County Planning Department.
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 submitted, dated January 24, 2001, to remain. Final subdivision approval of application (SUB 01-018) by the Planning Director, of the Hawaii County Planning Department is required.

The existing landscape improvements and ground cover located immediately adjacent to the building encroachments shall be relocated or maintained on the resultant new lot(s) or along the existing or/and new proposed boundary lines. No further building additions to increase the original dwelling within the new

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Side yard(s) will be permitted. Additional landscape materials (additional native trees, ohia trees, or the like, additional ground cover, and other similar landscape rock wall/fences improvements) may be introduced and placed on and within the respective yard(s) and open spaces or within the "pole" portion of the proposed and respective new lots (Lot 1-C and Lot 1-D). The permitted landscaping improvements shall be maintained in a healthy and attractive state.

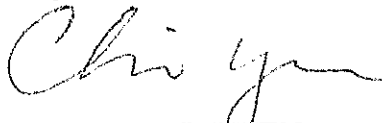
The owner/applicant or authorized representative shall contact the Department of Public Works (DPW)-Building Division to address and close electrical permit EH61909 prior to final subdivision approval (SUB 01-018) and/or change(s) in title.

4. The applicant shall comply with all tentative and final subdivision conditions of pending application (SUB 01-018). Final subdivision approval shall be secured on or within one (1) year from the effective date of tentative subdivision approval.

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)