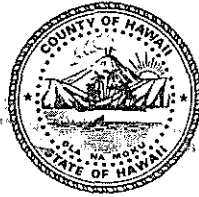


Harry Kim
Mayor



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

March 20, 2002

Mr. and Mrs. Clarence Nakamura
P. O. Box 5079
Kukuihaele, HI 96727

Dear Mr. and Mrs. Nakamura:

VARIANCE PERMIT NO. 1268 (VAR 01-064)
Applicants: CLARENCE NAKAMURA, ET AL.
Owners: CLARENCE NAKAMURA, ET AL.
**Request: Variance from Fences and Accessory
Structures, Minimum yards, and
Open space requirements,
Pursuant to Chapter 25, Zoning**
Tax Map Key: 4-8-009:011, Lot 11

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No. 1268 allows and permits the existing 8 feet height +/- wooden fence located on the subject TMK property (Lot 11) along a side boundary line to remain, "AS BUILT". The wooden fence is located approximately 0.5 feet to 1.0 feet from a side boundary in lieu of the minimum 8 feet side yard and 4 feet side yard open space requirements. The variance is from the Zoning Code, Chapter 25, Article 4, Division 2, Section 25-4-43, Fences and accessory structures, (a) (b) (c), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77 Other regulations, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

016735 *nd*

MAR 21 2002

Mr. and Mrs. Clarence Nakamura

Page 2

March 20, 2002

BACKGROUND AND FINDINGS

1. **Location and Zoning.** The subject property, containing 8700 square feet is Lot 11 of "Camp 106", is a portion of Grant 663, and is situated at Keaa, Puopaha, Kalakalaula, Hamakua, Hawaii.

The property was zoned Agricultural-40 acres (A-40a) by the County in 1967 and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Application.** The applicants and current owners, submitted the variance application, tax clearance, and \$250.00 variance filing fee on September 5, 2001.
3. **Site Plan.** The applicant's site plan, drawn to scale, were prepared by the applicants/owners and include with the variance application. The site plan identifies the property boundaries and denotes the location of the existing 8'-high +/- wooden fence along the affected side boundary line and other dwelling improvements.
4. **Building Permit Requirements.** The location of the existing dwelling and other building improvements were built and established on Lot 11 before the Zoning Code was adopted in 1967.

Fence Permit. It appears that the applicants/owners recently applied for building permit to allow the existing wooden fence improvements. The status of the detailed building plans to construct the fence and building permit application to issue an "after-the-fact" building permit have been deferred and held in abeyance by the agencies pending resolve of the fence height and setback issues.

Mr. and Mrs. Clarence Nakamura

Page 3

March 20, 2002

5. Agency Comments and Requirements:

- a. **Real Property Tax Office.** The Department of Finance-Real Property Tax memorandum dated September 14, 2001 states in part:

“Comments from the Appraisal Section:

There are no comments at this time.”

“Comments from the collection section:

Current Remarks: Real Property taxes are paid through December 31, 2001.”

- b. **Department of Health.** The State Department of Health (DOH) memorandum dated September 18, 2001, in the subject variance file states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

- c. **Department of Public Works (DPW).** The first Department of Public Works (DPW) Building Division memorandum dated September 14, 2001, states in part:

“Our comments on the subject application are as follows:

Approval of the application shall be conditioned on the comments as noted below.

Others: Owner to obtain a building permit for fence higher than 6’-0”.

The second DPW memorandum dated October 5, 2001, states in part:

“We have reviewed the subject variance application forwarded by your memo dated September 11, 2001 and have the following comments.

Approval of the application shall be conditioned on the owner obtaining a building permit for the fence that is higher than 6’-0”.

Mr. and Mrs. Clarence Nakamura
Page 4
March 20, 2002

Please refer questions to Kelly Gomes at ext. 8327."

6. **Notice to Surrounding Property Owners.** It appears that the applicants mailed notice of the variance request to the surrounding property owners on September 4, 2001 and September 19, 2001.
7. **Comments from Surrounding Property Owners or Public.** No written objections to the surrounding property owners or general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the fence improvements and encroachment issues were discovered after a complaint was registered with the Department of Public Works (DPW)-Building Division. The applicants submitted a recent map/site plan that identifies the location of the existing fence, dwelling, and other site improvements. The site plan identifies the distance between the fence along the affected side boundary line. Portions of the existing wooden fence exceed 6-feet and require compliance with minimum yard and open space requirements of the Zoning Code. The owners (applicants) became aware of the fence height and building encroachment issues after they applied for a building permit to allow the fence. Due to the differences ~~with adjoining~~ ✓ ^{between} differences with the adjoining property the applicants and owners constructed a fence for privacy and to act as a buffer.

The size and location of the existing dwelling is deemed non-conforming by the Zoning Code. Property topography and other extenuating circumstances which include differences with the owners of adjoining property (TMK: (3) 4-8-009:010, Lot 10) required a fence height to cope with property's natural slope and other "immediate" family needs to insure privacy and peace of mind.

Therefore, considering the foregoing facts and circumstances concerning the neighborhood there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicants 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

At this time there are no reasonable alternatives in resolving the difficulty of the applicants or current owner(s). Alternatives available to the applicant or current owner(s) to address and correct the existing building or fence encroachments include the following actions:

1. Remove a 2'-0" +/- portion to reduce the existing wooden fence to a maximum 6-foot height meeting the Zoning Code and other Building Codes requirements.
2. Redesign and relocate the existing fence to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose partial removal of the existing fence and the necessary changes to the fence would seem uneconomical and disruptive at this time. The removal of the existing encroachments or relocation of the fence would defeat the purpose the fence height and affect existing site and landscaping improvements.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s) and boundary/property lines. These purposes would not be undermined by this variance since the existing building encroachments not physically and visually obtrusive from adjacent property(s) or the existing rights-of-way, and do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns.

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.

Mr. and Mrs. Clarence Nakamura

Page 6

March 20, 2002

DETERMINATION

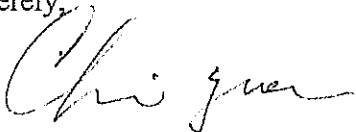
This variance request is approved subject to the following conditions:

1. The applicant or current owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/current owner(s), 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. The approval of this variance allows the wooden fence to remain on the subject TMK property, "AS BUILT" according to the site plan drawing submitted with the variance application. An "after-the-fact" permit for the existing wooden fence improvements established on the subject TMK property shall be secured from the Department of Public Works (DPW)-Building Division prior to any change in title or conveyance of the property.
4. No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law, which may change from time to time.
5. A building permits to construct the wooden fence and other future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. and Mrs. Clarence Nakamura
Page 7
March 20, 2002

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
P:\WP60\WRY\FORMLETT\VARAPPZCTMK48009011.NAKAMURA

xc: Real Property Tax Office
Planning Dept. - Kona