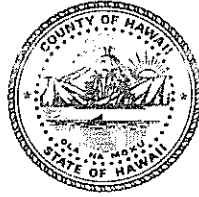


Harry Kim
Mayor



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

October 2, 2002

Mr. Gerald Nagata
789 Hoolaulea Street
Hilo, HI 96720

Dear Mr. Nagata:

VARIANCE PERMIT NO. 1316 (VAR 02-061)

Applicant: GERALD NAGATA
Owners: GERALD NAGATA, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 2-4-038:124, Lot 5

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1316 allows the dwelling and dwelling encroachments on the subject tax map key property (Lot 5), to remain, "AS BUILT", with a minimum 19.8 feet to 19.9 feet front yard and minimum 7.9 feet to 9.8 feet and 9.9 feet to 19.99 feet side yards, respectively, according to the variance application's site plan or survey map dated July 16, 2002. The variance request is from Lot 5's minimum 20 feet front and 10 feet side yards, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 5, Section 25-5-7, Minimum yards, (a) (2) (A) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 10,564 square feet, is Lot 5 within Waiakea Meadows Subdivision, Increment I, and situated at Waiakea, South Hilo, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC).

02627MD

OCT 04 2002

Mr. Gerald Nagata

Page 2

October 2, 2002

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, on August 12, 2002. The variance application's site plan or survey map drawing is drawn to scale and certified by a surveyor. The survey map dated July 16, 2002 shows the dwelling and eaves, "AS BUILT", on "LOT 5".

Note: The variance site plan map does not show the cesspool location or individual wastewater system (IWS).

3. **Agency Comments and Requirements (VAR 02-061):**

- a. The State Department of Health (DOH) memorandum dated August 27, 2002, states:

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

- b. The Department of Public Works (DPW) memorandum dated August 26, 2002, states:

"We have reviewed the subject application forwarded by your memo dated August 20, 2002 and have no objections to the request."

3. **Notice to Surrounding Property Owners**. Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on August 15, 2002 and August 28, 2002 by the applicant.

4. **Comments from Surrounding Property Owners or Public**. No further written agency comments were received and no objections from the surrounding property owners or the public were received.

Mr. Gerald Nagata
Page 3
October 2, 2002

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject property. The variance application's site plan map was prepared by a surveyor and shows the dwelling position, "AS BUILT", on Lot 5. This site plan shows small portions of the dwelling and "bay window" were constructed beyond the lot's building line limits or building envelope into the Lot 5's front yard and respective side yards pursuant to the Hawaii County Zoning Code.

The applicant or current owners became aware of the encroachment issues after the survey map was prepared and presented during escrow to sell the property. No evidence has been found to show indifference or premeditation by the current owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling and other related site improvements were constructed under valid building permits and construction permits issued by the County.

It appears that building inspections of the premises by the agencies during construction of the dwelling and related site improvements did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove the dwelling encroachments and "bay window" improvement or relocate the dwelling improvements and related site improvements elsewhere on the subject property.
2. Consolidate Lot 5 with portions of the adjoining property and right-of-way and re-subdivide the resultant consolidated lot to modify common boundary lines and respective minimum front and side yards, etc.

Mr. Gerald Nagata

Page 4

October 2, 2002

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)/uses and boundary/property lines.

It appears that the dwelling encroachments within the affected yards of Lot 5 are not physically noticeable or visually obtrusive from adjacent property(s) or the existing right-of-way. It appears the dwelling encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, it is felt that that the dwelling and dwelling encroachments will not detract from the character of the immediate neighborhood or the subdivision.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/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/owner(s), 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 dwelling on the subject tax map key property (Lot 5) will not meet Chapter 25, the Zoning Code's minimum front and side yards. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan map dated or survey map dated July 16, 2002, to remain, "AS BUILT", on Lot 5 or the subject TMK property.

Mr. Gerald Nagata

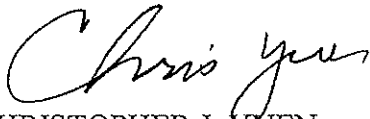
Page 5

October 2, 2002

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to Lot 5 or subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. 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

P:\WP60\WRY\FORMLETT\VARAPPZCTMK24038124.NAGATA

xc: Real Property Tax - Kona
Planning Dept. - Kona