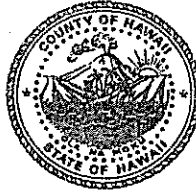


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

September 24, 2003

Mr. Ernest Nakamoto and Mrs. Barbara Nakamoto
570 Ainako Avenue
Hilo, HI 96720

Dear Mr. and Mrs. Nakamoto:

VARIANCE PERMIT NO. 1389 (VAR 03-038)
Applicants: ERNEST NAKAMOTO, ET AL.
Owners: ERNEST NAKAMOTO, ET AL.
**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**
Tax Map Key: 2-5-022:009, 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. 1389 allows dwelling encroachments located on Lot 5 to remain, "AS-BUILT", with a minimum 9.5 feet front yard and 17.9-18.3 feet front yard in lieu of the minimum 20.0 feet front yard and allow the dwelling's "AS-BUILT" corresponding front yard open yard requirements, according to the variance site plan map dated and signed on May 17, 2003. The variance request is from the subject TMK property's minimum yards pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 Minimum yards, (a) (2) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 5 containing 19,248 square feet, is within Block 14 of Ainako Subdivision, and situated at Punahoa 1st and 2nd, South Hilo, Hawaii.
2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about May 23, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated May 17, 2003. The variance application's site plan or survey map by Paul H. Murray and Associates, LLC denotes the building envelope, dwelling position and other site improvements on "LOT 5".

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3. **Agency Comments and Requirements- (VAR 03-038):**

- a. The Department of Public Works (DPW) memorandum dated July 3, 2003, states:

“We have reviewed the subject application forwarded by your memo dated June 12, 2003 and have no comments or objections to the request.”

- b. The State Department of Health (DOH) memorandum dated July 3, 2003, states:

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

4. **Notice to Surrounding Property Owners.** Proof of mailing notice(s) to surrounding property owners was submitted to the Planning Department. For the record, the first and second notice(s) were mailed on May 23, 2003 and July 25, 2003, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated May 17, 2003. The applicants/owners filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the “DWELLING” improvements, “AS BUILT”, on “LOT 5”. Portions of a 2-story dwelling and stairway were constructed beyond the lot’s building lines or building envelope into Lot 5’s minimum yards pursuant to the Hawaii County Zoning Code. The current owners became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the past or current owner(s)/builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 5 were constructed approximately 30+ years ago according to the owner’s background and County building permit(s) records. It appears that building inspections of the premises on or about 1970 by the

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agencies during construction of the building improvements did not disclose any building encroachment issues or building setback irregularities at that time.

ALTERNATIVES

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

1. Removing the existing building encroachments or redesigning or relocating the dwelling/deck and stairway to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 5) and the public R-O-W (Ainako Avenue) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

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 constructed nearly 30 + years ago within the front and minimum front yard and attendant front yard open spaces are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. Therefore, it is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 12, 2003. Additional time to consider property topography and submit proof of mailing notice(s) was deemed necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than September 30, 2003.

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

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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

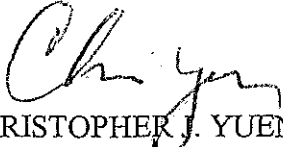
This variance request is approved subject to the following conditions:

1. The applicant/owner, 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/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 a "2-Story House" located on "LOT 5" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated May 17, 2003. The approval of this variance allows those dwelling improvements including stairways and roof eaves within "LOT 5" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 5".
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 the 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 on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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

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xc: Real Property Tax - Hilo
Planning Department - Kona