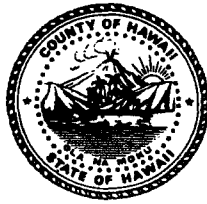


Harry Kim
Mayor



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Director

Daryn Arai
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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June 6, 2018

Mr. John David & Mrs. Lari Lee Bloom
91-310 Komohana Street
Kapolei, HI 96707

Dear Mr. & Mrs. Bloom,

SUBJECT: Application: Variance - VAR 18-000464
Applicant: MR. JOHN DAVID BLOOM
MRS. LARI LEE BLOOM
Owners: MR. JOHN DAVID BLOOM
MRS. LARI LEE BLOOM
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirement (Encroachment into South Side Yard Setback
and open space)
Tax Map Key: (3) 6-8-010: 025

The Planning Director certifies the **approval** of Variance No. 17-000464, subject to variance conditions. The variance will allow portions of the dwelling wall to remain with minimum 8.6-foot wall setback on the side (south) yard 10'-0" setback. This exception is in lieu of the required 10-foot side yard setback, and 5.0' open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, TMK (3) 6-8-010: 025, contains approximately 11,870 square feet and is situated within the Waikoloa Village Unit 1-8, South Kohala, HI. The subject property's street address is 91-310 Komohana Street, Kapolei, HI 96707.
2. **County Zoning.** RS-10
3. **State Land Use Designation.** Urban
4. **Setback Requirements.** 20 feet front & rear and 10 feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 10, 2018. The variance application's survey map dated December 29, 2017, was prepared by Roger D. Fleenor, LS, and denotes that portions of the dwelling side and roof are built into the side (south) yard setback and or open space. (See Exhibit A-Site Plan Survey)

The survey map dated December 29, 2017, shows the side section of the dwelling walls at 8.6 feet which is encroaching 1.4 feet into the side yard setback, in lieu of the required 10-foot side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (58571) was issued on December 20, 1973, for a single-family dwelling consisting of 3 Bedrooms and 3 Baths. The current homeowners did not build this building and were unaware of the violations when they purchased the dwelling.

7. **Agency Comments and Requirements.**

- a. Comments dated May 2, 2018, from the State Department of Health (DOH), indicated that there are no environmental health concerns.
- b. No comments were received from Department of Public Works - Building Division as of this date.

8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. The applicant has submitted, an Affidavit of Roger D. Fleenor, verifying that the first mailing was sent on February 1, 2018 as permitted under Section 25-2-4 (e). According to USPS certificate of mailing receipt and affixed postal receipts, the second notices were mailed on May 10, 2018. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 26, 2018.

9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners and none from the general public were received.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant 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 property.***

The Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the unintentional encroachment of the dwelling side wall into the 10-foot (south) side yard setback as required by the Zoning Code.

The survey map dated December 29, 2017, shows a side wall encroaching into the side yard (south) setback a total of 1.4 feet' in lieu of the required 10-foot side yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in December 20, 1973, over 44 years ago. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and development of the subject property.

Alternatives

- (b) *There are no other reasonable alternatives that would resolve the difficulty.***

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front yard of the subject property include the following actions:

This alternative would be deemed unreasonable, especially when, except for a variance, the only solution would be to demolish the side wall and relocate the wall 1.4 feet into the building.

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

- (c) *The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

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. The dwelling has been in existence for over 43 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built on the subject property (TMK: 6-8-010: 025) will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

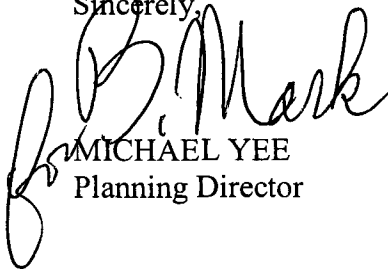
This variance application is approved subject to the following variance conditions:

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 Hawai'i 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. Should the dwelling walls built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. Future or new 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 variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-18-000464.

Any questions may be directed to this office, attention Terry Dunlap at (808) 323-4770.

Sincerely,



MICHAEL YEE
Planning Director

Bloom (Variance 18-000464) TMK 6-8-010: 025

June 6, 2018

Page 6 of 6

xc: Natalie Whitworth DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

Roger D. Fleenor, LS