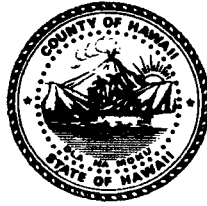


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
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Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
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Hilo, Hawai'i 96720
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Fax (808) 961-8742

May 31, 2018

Dixie Kaetsu
681 Manono Street, Suite 108
Hilo, HI 96720

Dear Ms. Kaetsu:

SUBJECT: Application: Variance - VAR 18-000469
Applicant: DIXIE KAETSU
Owner: DIXIE KAETSU
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
Requirements (Encroachment into Southwest Side Yard
Setback)

Tax Map Key: 2-5-029:027

The Planning Director certifies the **approval** of Variance No. 18-000469, subject to variance conditions. The variance will allow portion of this single-family dwelling with a minimum 8.25-foot side (southwest) yard setback, These exceptions are in lieu of the required 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

The original single-family dwelling was built in 1964, prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling into the front yard setback as reflected on the site plan is considered legal non-conforming.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 11,285 square feet and is situated in the Kaumana Terrace Subdivision, South Hilo, Hawai'i. The subject property's street address is 77 Terrace Drive.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-foot front and rear; 10-foot for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 19, 2018. The variance application survey map dated August 5, 2015, was prepared by Niels Christensen, LPLS, The Independent Hawaii Surveyors, LLC. (See Exhibit A-Site Plan)

The original single-family dwelling was built in 1964, prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling into the front yard setback as reflected on the site plan, is considered legal non-conforming. However, an addition to the single-family dwelling constructed in 1976 encroaches 1.75 feet into the southwest side yard setback. Therefore, a variance is required to legitimize the encroachment of the single-family dwelling into the side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits:
 - a. Building Permit - 28680 was issued for the construction of a single-family dwelling consisting of: 3 bedroom, 1-1/2 bath, living room, kitchen, dining area, and garage on January 22, 1964.
 - b. Building Permit-44645 was issued for the construction of a patio on March 4, 2070.
 - c. Building Permit-761759 was issued for additions and renovation on August 11, 1975.
 - d. Building Permit-770798 was issued for additions on January 4, 1977.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated April 13, 2018: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments received from Department of Public Works Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on March 31, 2018. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 3, 2018.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated March 23, 2018 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to June 8, 2018.

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 encroachment of the single-family dwelling into the 10-foot southwest side yard setback as required by the Zoning Code.

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 two-story, single-family dwelling constructed in 1964, nearly 54 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing two-story, single-family dwelling. 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 side yard of the subject property include the following actions:

To remove the building encroachments and/or redesign the existing single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the two-story, single-family dwelling was in compliance with all County requirements.

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjacent property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side yard setbacks is not a viable options. There are no other reasonable alternatives to resolve the encroachment issue.

Both of these alternatives are not practical. 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 original single-family dwelling has been in existence for approximately 54 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. Subsequent building additions were also constructed under valid building permits and other construction building permits. 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.

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 (Lot 1) will not meet the minimum front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

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 existing single-family dwelling 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. An Ohana or Additional Farm Dwelling permit shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, (Zoning) or state law, which may change from time to time.
5. Future or new building improvements and permitted uses shall be subject to State laws 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-18-000469.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

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Dixie Kaetsu
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Enclosure: Exhibit A- Site Plan

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

EXHIBIT
A

EXISTING CONDITIONS UPON LOT 1, KAUMANA TERRACE

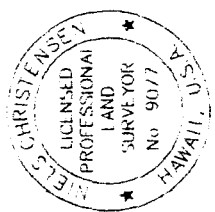
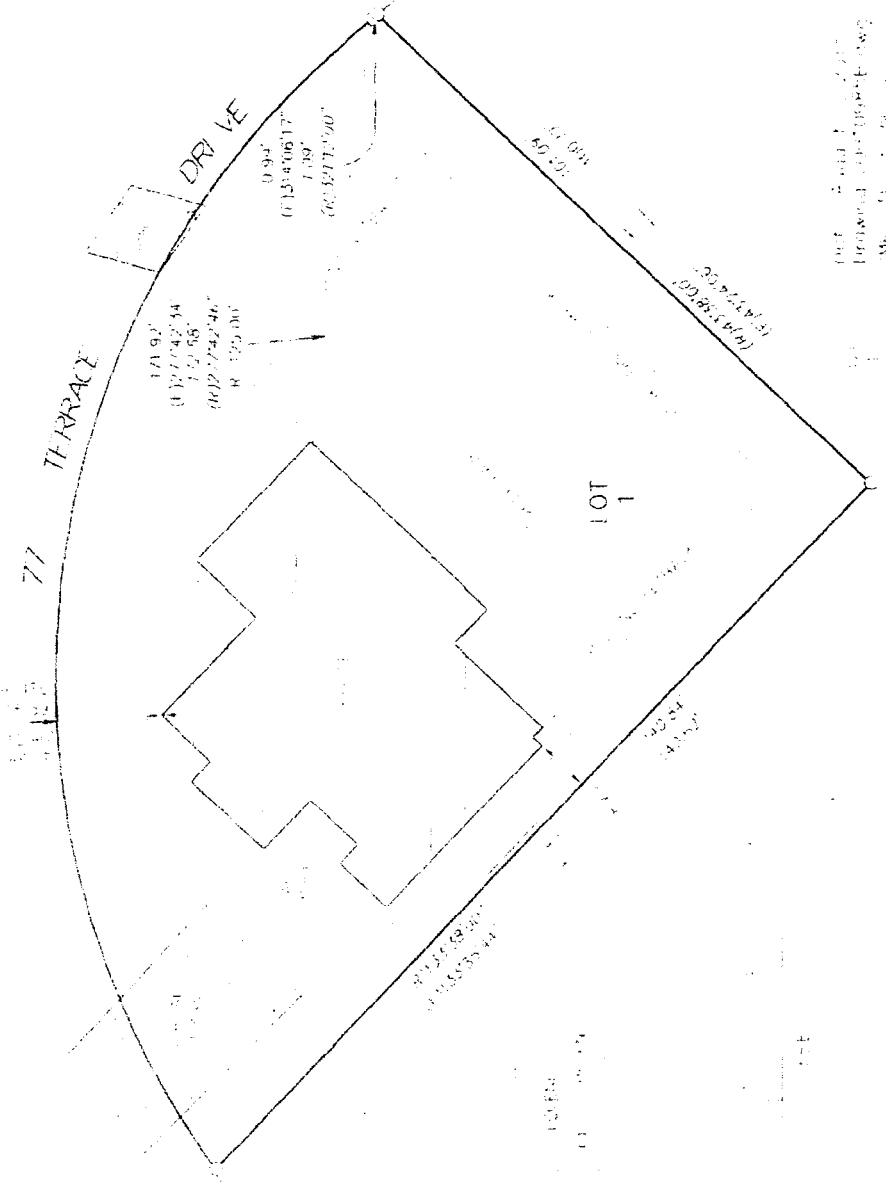
PONAHAWAI, SOUTH HILO, ISLAND OF HAWAII, HAWAII

1. This plan shows the existing conditions upon Lot 1, Kaumana Terrace, Ponahawai, South Hilo, Island of Hawaii, Hawaii, as shown on the attached map.

2. The area shown on this plan is the same as that shown on the attached map.

3. The area shown on this plan is the same as that shown on the attached map.

4. The area shown on this plan is the same as that shown on the attached map.



Niels Christensen

The Independent Hawaii Surveyors, LLC

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