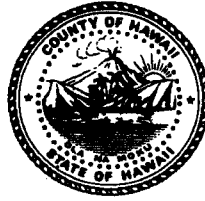


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Mayor

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County of Hawai'i

PLANNING DEPARTMENT

November 14, 2019

Faye Yamashita
130 Pohakulani Street
Hilo, Hawai'i 96720

Dear Ms. Yamashita:

SUBJECT: Application: Variance – VAR-19-000533
Applicant: FAYE YAMASHITA
Owner: FAYE YAMASHITA
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 Side (South) Yard
Setback.

Tax Map Key: (3) 2-4-014:007

The Planning Director certifies the **approval** of Variance No. 19-000533, subject to variance conditions. The variance will allow a portion of the covered patio, carport, workshop and office to remain with a minimum side (south) yard setback ranging from 6 feet to 6.9 feet and associated roof eave projection ranging from 3.2 feet to 4.8 feet side (south) yard open space in lieu of the minimum 10-foot side yard setback and 5-foot side open space requirement. It also allows for the detached shed to remain with a minimum rear (west) yard setback ranging from 16.1 feet to 16.5 feet in lieu of the required 20-foot rear yard setback requirement. These exceptions are in lieu of the required 20-foot rear yard and 10-foot side yard setback and the 5-foot side yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

The variance will also allow the detached shed to remain with a minimum 9.6-foot side yard setback, and encroaching 0.4 feet (4.8 inches) into the side (south) yard setback to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 21,978 sq. ft. and is situated in the Ho'olauna Tract, Waiākea, South Hilo, Hawai'i. The subject property's street address is 130 Pohakulani Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10)
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-foot front; 10-foot for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 22, 2019. The variance application survey map dated June 30, 2017, was prepared by Paul H. Murray, LPLS, Paul H. Murray & Associates, LLC. (See Exhibit A-Site Plan)

The survey map shows the following setbacks:

- a. The encroachment leaves the covered patio, carport, workshop and office with a minimum side (south) yard setback ranging from 6 feet to 6.9 feet and associated roof eave projection ranging from 3.2 feet to 4.8 feet side (south) yard open space in lieu of the minimum 10-foot side yard setback and 5-foot side open space requirement
- b. The encroachment leaves the detached shed to remain with a minimum rear (west) yard setback ranging from 16.1 feet to 16.5 feet in lieu of the required 20-foot rear yard setback requirement.

The survey map shows the following encroachment:

- a. The covered patio, carport, workshop and office encroaches 3.1 feet into the 10-foot side (south) yard setback and associated roof eave encroaches 2.62 feet into the 5-foot side (north) yard open space.
 - b. The detached shed encroaches 3.5 feet to 3.9 feet into the 20-foot rear (south) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits:
 - a. Building Permit - 32401 was issued for the construction of a single-family dwelling consisting of: 3 bedroom, 1 bath, living room, kitchen, and dining area on December 7, 1967.

- b. Building Permit – 039187 was issued for the construction of a carport addition, office and bath on July 18, 1968.
- c. Building Permit – 47279 was issued for the construction of a 120 sq. ft. storage shed in 1971.
- d. Building permit – 54453 was issued for a 220 sq. ft. patio addition in 1972.

7. Agency Comments and Requirements.

- a. State Department of Health (DOH) memorandum dated September 3, 2019: “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 July 19, 2019, and August 9, 2019, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on August 10, 2019.

9. Comments from Surrounding Property Owners or Public.

- a. Letter in support of the variance, dated August 13, 2019, was received from Kathleen Sakamoto.

10. **Time Extension:** The applicant’s variance application was acknowledged by letter dated Mach 5, 2019, 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 November 15, 2019.

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 covered patio, carport, workshop and office into the 10-foot south 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 covered patio, carport, workshop and office constructed in 1968, nearly 51 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing structures. 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 enclosed covered patio, carport, workshop and office 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 enclosed garage was in compliance with all County requirements.

Because the encroachments are within the side yard setback, one alternative would be to consolidate the front yard of the subject property with the roadway and consolidate the subject property with the adjoining side property, which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum front and side yard setbacks.

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 covered patio, carport, workshop and office has been in existence for approximately 51 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.

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 shed, covered patio, carport, workshop and office built on the subject property (Lot 16-B) will not meet the minimum rear and side yard setback 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.

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3. Should the existing single-family dwelling, covered patio, carport, workshop, office and detached shed on the subject property be destroyed by fire or other natural causes, the replacement structures 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 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 No. 19-000533.

Sincerely,



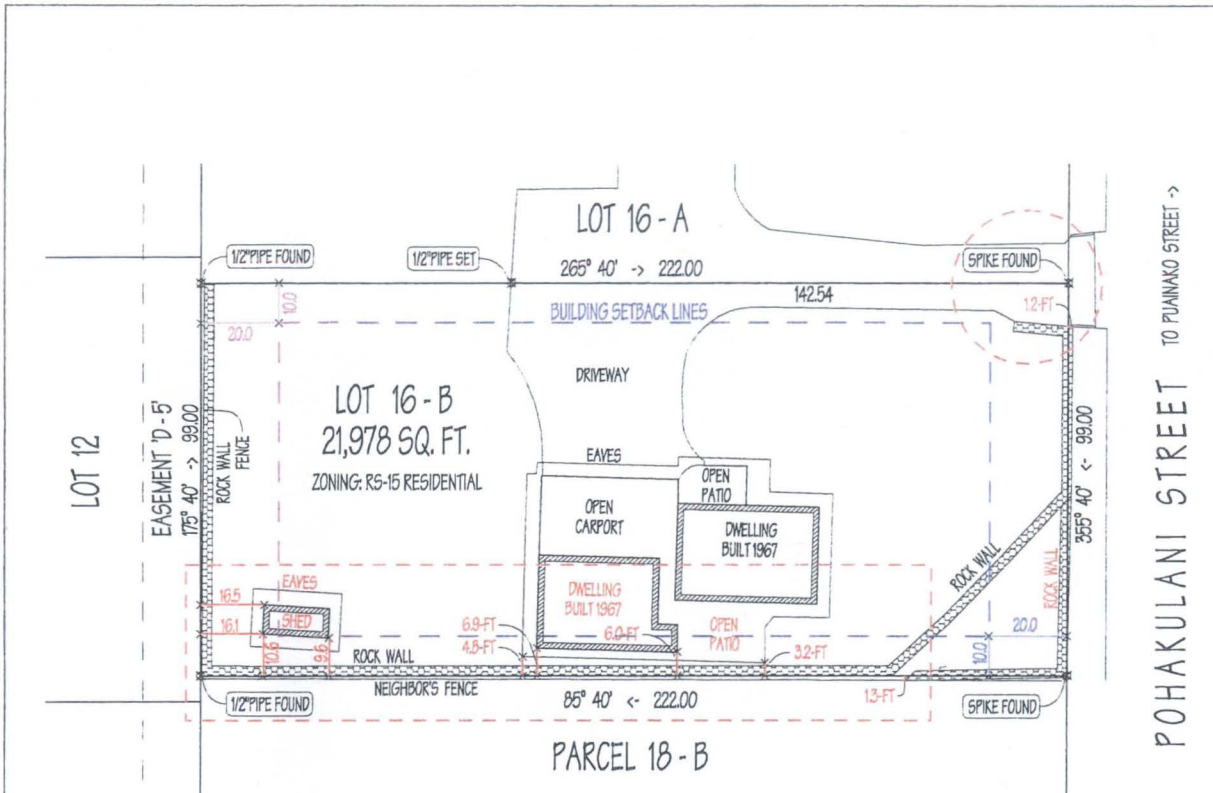
MICHAEL YEE
Planning Director

LHN:jaa

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Enclosure: Exhibit A- Site Plan

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



STATEMENT:

- 1.) I HEREBY CERTIFY THAT THE BOUNDARIES OF THE SUBJECT PARCEL OF LAND, AS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION ON 2017-JUN-30, ARE CORRECT AND CONSISTENT WITH MONUMENTS FOUND ON THE GROUND.
- 2.) A SMALL PORTION OF A ROCK WALL INTRUDES 1.2-FT INTO POHAKULANI STREET. THE END OF THE ROCK WALL EXTENDS 1.3-FT. INTO PARCEL 18-B. PLEASE REFER TO THE DRAWING FOR DETAILS.
- 3.) THE REMAINING IMPROVEMENTS LOCATED AND ADDRESSED ON THIS MAP CONFORM TO ACT 131, AMENDMENT TO CHAPTER 669, HAWAII REVISED STATUTES, PART II, "STRUCTURE POSITION DISCREPANCIES 0.50-FT. FOR RESIDENTIAL PROPERTY." THIS SURVEY DOES NOT APPLY TO ANY ISSUE THAT IS NOT DETAILED ON THE MAP.
- 4.) PURSUANT TO CHAPTER 25, ZONING CODE, HAWAII COUNTY, ARTICLE 5, DIVISION 1, SECTION 25-5-7, MINIMUM YARDS, AND ARTICLE 4, DIVISION 4 SECTION 25-4-44, PERMITTED PROJECTIONS INTO YARDS AND OPEN SPACE, THE FRONT AND REAR YARD BUILDING SETBACKS ARE 20-FT AND A MINIMUM CLEAR-SPACE OF 14-FT FOR PERMITTED PROJECTIONS. THE SIDE YARD BUILDING SETBACKS ARE 10-FT AND A MINIMUM CLEAR-SPACE OF 5-FT FOR PERMITTED PROJECTIONS.
- 5.) THE EAVES, OPEN PATIO AND PORTION OF THE DWELLING INTRUDE INTO THE SIDE YARD BUILDING SETBACK. A SHED AND EAVES INTRUDE INTO THE SIDE AND REAR YARD BUILDING SETBACKS. PLEASE REFER TO THE DRAWING FOR DETAILS.
- 6.) THE ZONING CODE INFORMATION REPRESENTED IS AN INTERPRETATION OF AVAILABLE DATA AND THE COUNTY PLANNING DEPARTMENT WOULD DETERMINE IF THERE ARE VIOLATIONS TO THE ZONING CODE.
- 7.) THIS MAP WAS PREPARED FOR THE SPECIFIC ACCOUNT IT WAS ATTACHED TO AND SHOULD NOT, UNDER ANY CIRCUMSTANCES BE CHANGED, ALTERED OR USED TO EXECUTE ANY OTHER APPLICATION.

POHAKULANI STREET TO PUANNAKO STREET >

SURVEY FOR FAYE A. YAMASHITA

LOT 16-B, PORTION OF LOT 16, HOOLAUNA TRACT, FILE PLAN 396
WAIAKEA, SOUTH HILO, ISLAND OF HAWAII, HAWAII

SURVEY AND PLAN BY PAUL H. MURRAY & ASSOCIATES, LLC
P. O. BOX 1189 HILO, HAWAII
TMK (3) 2-4-014:007 / 130 POHAKULANI STREET DATE: 2017-JUNE-30

EXHIBIT
A

THIS WORK WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION

Paul H. Murray

PAUL H. MURRAY, LPLS
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NUMBER: LS-7589
LAND COURT SURVEYOR CERTIFICATE NUMBER 260
LICENSE EXPIRATION DATE: APRIL 30, 2018