

VAR 522

August 25, 1993

Mr. Richard L. Cooksey
74-5088 Palani Road
Kailua-Kona, HI 96740

Dear Mr. Cooksey:

Variance Application (VAR 93-2)
Petitioner: Richard L. Cooksey
Request: Variance From Minimum Sideyard Setback
Tax Map Key: 7-4-14: 107

After reviewing your application and the information submitted in its behalf including comments by this letter from consulting agencies, the Planning Director by this letter certifies the approval of your variance request to allow the retention of the existing dwelling structure at minimum five (5) feet from the sideyard property boundary in lieu of the required minimum ten (10) feet. This approval is based on the following findings:

Special and Unusual Circumstances

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum setback requirements for the retention of the existing single family dwelling at a minimum five (5) feet from the sideyard property boundary.

The subject property, consisting of 14,980 square feet is zoned Single Family Residential with a minimum lot size of 10,000 square feet (RS-10) allows one (1) single family dwelling. The parcel was one (1) of four (4) lot subdivision which was approved by the Planning Director on January 29, 1974. On August 26, 1982, a second subdivision was approved as a revision to the previous subdivision. The reason for the revision was to correct a potential survey error and moreso to clear title to the properties which were previously conveyed but had not been recorded. As a result of this revised subdivision the dwelling which was under construction at the time on the subject property is now situated five (5) feet from the newer sideyard property boundary. It should be pointed out at this time the building permit was issued for the subject property the site plan indicated that the dwelling was approximately twenty-three (23) feet from the previous sideyard property boundary which was well beyond the minimum ten (10) feet sideyard setback requirement.

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Considering the foregoing facts, it is determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the property owner or petitioner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use and manner of development of the subject property.

Alternatives

There are no reasonable alternative in resolving the difficulty of the petitioner. Removing or remodeling the existing dwelling is not economically feasible and would disrupt the design and function of the existing dwelling structure. To litigate the survey boundary dispute would not be in the best interest of any of the parties involved. Further, the alternatives would be putting an excessive demand on the petitioner when a more reasonable alternative is available. The action taken by the petitioner to legitimize the existing dwelling sideyard setback is one which is being done on his own record.

Intent and Purpose

The intent and purpose of the minimum building setback requirements on a property are to assure that adequate air and light circulation, visual and special circumstances are available between structures and property lines. In this particular request, the location of this existing dwelling will still provide for these functions, although it does not meet the minimum sideyard ten (10) foot setback as required by the Zoning Code. Given a proposed dwelling to be constructed on the property to the south of the subject property and meeting the minimum ten (10) foot sideyard setback requirement and given the approximate eighteen (18) foot wide area of survey "gap", there will be an approximate thirty-three (33) feet separation between the structures.

In view of above issues, this variance request would be consistent with the general purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

Based on the foregoing, the Planning Director has concluded that this variance request be approved subject to the following conditions:

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1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. That all future structural additions to the dwelling shall be in compliance with all Zoning Code requirements and no other setback variances shall be considered for any development of this property.
3. The petitioner, its assigns or successors, shall comply with all other applicable Federal, State, and County rules and regulations.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



VIRGINIA GOLDSTEIN

Planning Director

EC:mjh
0555D

xc: West Hawaii Office
Subdivision No. 4840