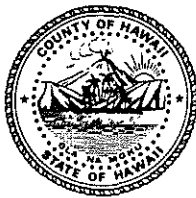


Stephen K. Yamashiro
Mayor



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Virginia Goldstein
Director
Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

COPY

September 3, 1993

Mr. & Mrs. James A. Riely
73-1422 Kahakea Place
Kailua-Kona, Hawaii 96740

Dear Mr. & Mrs. Riely:

Variance Application WH (VAR 93-25)
Applicants: James A. & Ann Carroll Riely
Variance from Minimum Front and Side Yard Setback
Requirements
Tax Map Key: 7-3-47: 41

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow the your variance request to allow an existing garage with a front yard setback of 28.9 feet and side yard setbacks of 16.7 to 18.2 feet respectively in lieu of the minimum 30 front yard setback and 20 foot side yard setback as required by Chapter 25 (Zoning Code), Article 8, (Agricultural Districts), Section 25-156 (a)(1)(2)(Minimum yards).

The subject property is a corner lot at the southeast intersection of Hina-Lani Street and Kahakea Place in the Kona Heavens Subdivision, Unit I, Kaloko, North Kona, Hawaii, TMK: 7-3-47: 41.

The Planning Director has concluded that the variance request from the MINIMUM FRONT AND SIDE YARD SETBACK requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kona Heavens Subdivision consisting of 44,400 square feet of land area.
2. The existing single family dwelling and garage was issued Building Permit No.0726 on January 9, 1974 and the Building Permit No. 03894 issued on October 3, 1979 respectively. The final inspection by the Department of Public Works, Building Division was done and the file on the building permits for both structures were closed.

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3. A survey map prepared and certified by Don McIntosh in 1993 shows the existing garage with a FRONT YARD SETBACK OF 28.9 feet and SIDE YARD SETBACKS OF 16.7 and 18.2 feet in lieu of the minimum 30 feet and 20 feet respectively. As such, the subject garage encroaches into the FRONT YARD SETBACK BY 1.1 FEET AND SIDE YARD SETBACK at the FRONT OF THE GARAGE BY 1.8 FEET AND AT THE REAR OF THE GARAGE BY 3.3 FEET.
4. The applicants have just purchased the property and had a certified survey prepared which showed the minor encroachment into the front and side yard setbacks.
5. The homeowners at that time the garage was constructed received all of the necessary Department of Public Works, Building Division approvals.
6. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to be adhered to for the proposed garage in 1979.
7. It appears that a construction staking error occurred in 1979 when the garage was sited on the property. This minor siting error was done at the time of construction. No other evidence has been found to show otherwise.
8. It has been over 14 years since the construction of the existing garage which was approved by the County and the petitioner is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the garage structure.
9. The subject property is a corner lot, 44,400 square feet in size.
10. The present 1.1 feet, 3.3 feet and 1.8 feet encroachments are minor in relationship to the size of the property, the topography of the property, the location of the garage adjacent to an existing privacy rock wall and the distances between the garage and the adjacent single family dwelling development.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject 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 subject property.

ALTERNATIVES

1. The applicant's alternatives are to remove the encroachment portion of the garage, resiting and rebuilding the garage to comply with the setback requirements.
2. The resiting or remodeling of the proposed improvements is economically unreasonable and would disrupt the design, function and architecture of the existing improvements, especially with regard to the relatively minor encroachments and the circumstances concerning this matter.
3. The remaining portions of the garage and dwelling comply with all other zoning and building setback requirements.

Based on the above cited considerations, the removal, resiting and/or redesigning of the existing garage would create excessive cost and undesirable design changes to the architecture and appearance of the existing dwelling and garage improvements. Therefore while there may be alternatives available to the applicant, they are deemed to be unreasonable and would place excessive demands on the petitioner when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

1. The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines.
2. The existing garage on the subject property is presently situated 28.9 feet from the front property line and 16.7 and 18.2 feet from the side property lines.
3. The subject property's is a corner lot and thus has only one property to the east which the approval of this variance may have an impact on. However, with the existing adjacent privacy wall and the existing location of the dwelling on the adjacent parcel, there is determined to be adequate space for air, light and physical space between the developments on the two properties.
4. The properties are also of enough size that the granting of this variance for the minor garage encroachments will not interfere with or adversely impact the adjacent property with the granting of this variance. The rest of the existing dwelling complies with the minimum yard setbacks requirements of the Zoning Code.

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There were no objections from any of the participating government agencies. There were also no objections from any surrounding property owners to the proposed variance request.


Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and 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.

This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. All other applicable State and County rules and regulations shall be complied with.

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

RHY/rld
0516Q

cc: Daniel Cromwell
West Hawaii Office