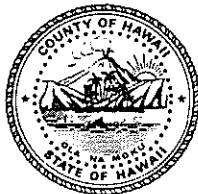


Stephen K. Yamashiro
Mayor



VAR 523

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

August 31, 1993

Mr. Roger M. Hibline
Ms. Cynthia Ward
P.O. Box 1900
Kailua-Kona, Hawaii 96745

Dear Mr. Hibline and Ms. Ward:

Variance Application WH (VAR 93-29)
Applicant: ROGER M. HIBLINE & CYNTHIA WARD
Variance from Minimum Side Yard Setback Requirements
Tax Map Key: 7-7-17: 73

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 single family dwelling with a 7.40 and 7.98 foot side yard setback in lieu of the minimum 8 foot sideyard setback as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential District, Section 25-124 (a)(1)(B)(Minimum yards).

The subject property on the makai (west) side of Naniloa Street approximately 150 feet south of the La'aloa Avenue/Naniloa Street intersection in the White Sand Beach Estates subdivision, La'aloa, North Kona, Hawaii. TMK: 7-7-017: 073.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The existing single family dwelling was issued the following permits by the Department of Public Works, Building Division:
 - a. Building permit #02240 issued on January 19, 1977.
 - b. Plumbing permit # 1536 issued on June 8, 1977.
 - c. Electrical permit # 1839 issued on May 23, 1977.
2. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling.

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3. 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 dwelling in 1977.
4. It appears that a construction staking error occurred in 1977 when the dwelling was constructed in the siting of the structure on the property. It also appears that a very minor siting error was done at the time of construction with the 7 inch and 1/4 inch encroachments. No other evidence has been found to show otherwise.
5. It has been over 16 years since the construction of the existing dwelling 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 dwelling.

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 subject property is basically a rectangular parcel.
2. The present 7 inch and 1/4 inch encroachments into the north side yard property line are minuscule in relationship to the minimum required 8 feet side yard setback. These minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the side yard.
3. The applicant on their own volition are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
4. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.

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Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant 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. The existing dwelling on the subject property is presently situated 7 feet - 5 inches at the northeast corner and 7 feet - 11 and 3/4 inches at the northwest corner against the north side property line. Therefore, although only a 7 foot - 5 inch side yard setback and 7 foot - 11 and 3/4 inch sideyard setback is being provided against the north side property line, the encroachments are so minuscule and are not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the vacant property to the north. Therefore, while the Zoning Code requires a minimum 8 foot side yard setback, in this particular case, the encroachments are so minuscule that it will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling complies with the minimum yard setbacks requirements of the Zoning Code.

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:

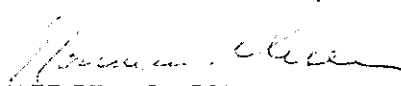
1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.

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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
0508Q

xc: Brian Nishimura
West Hawaii Office