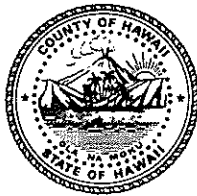


Stephen K. Yamashiro
Mayor



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

528

September 3, 1993

Mrs. Chrystal Yamasaki
Wes Thomas & Associates
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

Variance Application WH(VAR 93-38)
Applicant: Farouk M. Aqeel
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 8-2-02: 038

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow an existing Single Family Dwelling with a 19.8 foot side yard setback in lieu of the minimum 20 foot side yard setback as required by Chapter 25 (Zoning Code), Article 8 (Agricultural District), SECTION 25-156 (a)(2) (Minimum yards).

The subject property is located on the makai (west) side of Napoopoo Road approximately 4,400 feet south of the Napoopoo Road/Hawaii Belt Road junction in Kealakekua, South Kona, Hawaii, TMK: 8-2-02: 038.

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 subject single family dwelling was issued Building Permit No. 05734 on January 20, 1983. The Building Permit was closed on September 21, 1983, by the Building Department.
2. A certified survey map dated July 23, 1993, prepared by Wes Thomas & Associates and shows the existing dwelling with 19.8 foot side yard setback on the north side property line. As such, the subject dwelling encroaches into the side yard setback at the FRONT OF THE DWELLING BY APPROXIMATELY 2 INCHES OR 0.2 FEET.

CG134

SEP 15 1993

Mrs. Chrystal Yamasaki
Page 2
September 3, 1993

3. The property is 1.987 Acres in size and was created by Subdivision No. 4798 approved by the Planning Department on September 15, 1981.
4. The side property line where the 2 INCH ENCROACHMENT ENTERS INTO THE SETBACK IS A SIDE YARD WHICH IS ALONG THE POLE PORTION OF TAX MAP KEY: 8-2-002: 039 which is a flag lot. This particular design will not allow any structures within this section of the parcel of TMK: 8-2-002: 039.
5. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
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 dwelling in 1983.
7. It appears that a construction staking error occurred in 1983 when the dwelling was constructed in the siting of the structure on the property. It also appears that a very miniscule siting error was done at the time of construction with the 2 inch encroachment. No other evidence has been found to show otherwise.
8. It has been over 10 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 2 inch encroachment into the side yard property line is minuscule in relationship to the minimum required 20 feet side yard setback. This minuscule encroachment is not perceptibly visible that it could be readily detected or seen as encroachments into the side yard.

Mrs. Chrystal Yamasaki
Page 3
September 3, 1993

3. The applicant on his own volition is 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.

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 19.8 feet from the the north side property line. Therefore, although only a 19.8 foot 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 20 foot side yard setback, in this particular case, the encroachment is 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.

Mrs. Chrystal Yamasaki
Page 4
September 3, 1993

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
0519Q

cc: Farouk M. Aqeel
West Hawaii Office