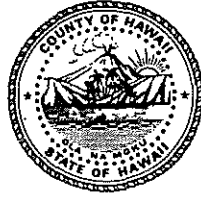


Stephen K. Yamashiro
Mayor



VAR 544
denial
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

CERTIFIED MAIL

October 25, 1993

Mr. Robert K.Y. Lee
R.M. Towill Corporation
73-5574 Maiiau Street, Apt. #11
Kailua-Kona, Hawaii 96740

Dear Mr. Lee:

Variance Application WH(VAR93-40)
Applicants: R.M. TOWILL CORPORATION
Variance from Minimum SIDE YARD SETBACK Requirements
Tax Map Key: 7-5-29: 22

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is a lot developed with an approximately 2,600 square foot single family dwelling in the Kona Heights subdivision which is a single family residential subdivision. The property is developed to the rear and north and south side yards. There are no topographical constraints which can be considered special or unusual circumstances related to the property and to the fact that the encroachments are necessary for the function of the single family dwelling on the property.
2. The subject single family dwelling was issued Building Permit No. 007352 on March 7, 1986. The Building Permit was closed on September 11, 1986 by the Building Department.
3. Building Permit No. 007974 was issued by the Building Department for the construction of a swimming pool. The Building Permit was closed on January 7, 1988.
4. Building permit No. 916394 was issued by the Building Department for a 1 bath/sitting room addition. The Building Permit was closed on December 3, 1991.

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5. A certified survey map prepared by Robert K.Y. Lee shows the existing dwelling with 5.37 FOOT SIDE YARD SETBACK and a 1.5 FOOT OPEN CLEARSPACE YARD.
6. The Zoning Code requires a minimum 8 FOOT SIDE YARD SETBACK AND 4 FOOT OPEN CLEARSPACE YARD as required by Chapter 25 (Zoning Code), Article 18 (UNPLANNED), Section 25-237 (b) (Other regulations)(b) and Article 1 (General Provisions), Division 10 (Yard and Open Space Regulations), Section 25-66 (a)(1)(Projections into required yards and open spaces).
7. There are no unusual or special circumstances related to the property or deprivation of substantial property rights which would necessitate the setback encroachments. The OPEN patio was approved and is allowed to encroach into the sideyard setback. However, in this instance, the approved OPEN PATIO was illegally enclosed for a bedroom. If the applicant had applied for a building permit for the building encroachment area, they would have been notified that it would not have been allowed because it would not have met the minimum setback requirements.

Therefore, considering the foregoing facts, it is determined that there are no 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 a slightly irregular rectangle interior parcel with a front and rear yard and two side yard setbacks as required by the Zoning Code.
2. The OPEN PATIO was approved as an open type projection to encroach into the side yard setback a minimum of 4 feet. Therefore, the building permits for the dwelling structure had been approved as it complied with all of the necessary Zoning Code setback requirements.
3. The applicant's option is relatively simple, in that they can remove the building and roof setback encroachments to comply with the minimum setback requirements. The APPROVED condition prior to the applicant constructing the illegal improvements constitute the ability of the applicant to

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meet these requirements without affecting the architectural design of the dwelling to conform with the minimum setbacks. This removal would not create undue and excessive hardships of the applicant in this particular situation.

Based on the above cited considerations, there is a reasonable solution which is not excessive considering the situation.

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 had been approved to comply with all Zoning Code and Housing Code setback requirements. The illegal improvements constructed within the setback area do not provide for the necessary air, light, and physical circulation around the dwelling structure. There was an objection from the Department of Public Works who cited no special or unusual circumstances for the granting of this variance request, in this particular case.

Based on the foregoing findings, this variance request would not 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.

Therefore, this variance request is hereby denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be

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agreed to be the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please feel free to contact us.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

RHY:rld
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xc: DPW-Building, Kona Office
West Hawaii Office