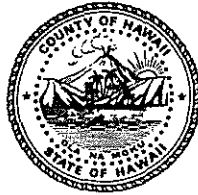


Stephen K. Yamashiro
Mayor



VAR 558

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

January 10, 1994

Mr. Don McIntosh
P.O. Box 1686
Kailua-Kona, Hawaii 96745

Dear Mr. McIntosh:

Variance Application WH(VAR93-64)
Applicants: GENE & LILLIAN SELTZER
Variance from Minimum SIDE & REAR YARD SETBACK Requirements
Tax Map Key: 7-7-10: 49

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 in the Gouveia subdivision which is in the Single Family Residential -7,500 square foot (RS-7.5) zone district. 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. 006309 on May 1, 1984. The Building Permit was closed on September 27, 1984 by the Building Department.
3. Building Permit No. 935253 was issued by the Building Department to THE PETITIONER, GENE SELTZER, for the construction of a master bedroom suite addition to the single family dwelling. The petitioner represented on the site plan submitted for this building permit that the addition would comply with the minimum side yard setbacks required by the Zoning Code.

00516

JAN 14 1994

Mr. Don McIntosh
Page 2
January 10, 1994

4. In a letter dated July 23, 1993 from Garry Hoffeld, Concept Building Design to Joy Matsumoto, Building Inspector of the Building Department, it states the following:

"I took out a permit for a studio (master bedroom) over an existing garage. You came out and gave me a framing inspection. During the course of construction the owner has acted as the contractor and has had me do a few things that are not in the permit. (added a stairway, bar sink, etc.). In addition I have found out that the setbacks are not as he told me they were when I began the project. Because I was involved in the project in a financial way (owner owed me money that he would not release until I complete job). I was unable to stop work. I would like to have my name removed from the building permit or have the permit revoked so as not to be responsible for possible repercussions due to the owners actions."
5. Building Permit No. 935253 voided by Building Department on July 23, 1993.
6. On July 26, 1993, the Building Department issued a Stop Work Order to the petitioner instructing with the following:
 - a. All construction is to stop immediately.
 - b. A new building permit is required since your contractor, Concept Building Design, has voided BP# 935253.
 - c. You are also required to have a licensed surveyor submit a certified plot plan indicating setbacks.
 - d. You have 30 days to submit the surveyor's results. Failure to comply will result in legal action against you.
 - e. You are hereby notified that NO MORE WORK SHALL BE DONE UPON THESE PREMISES UNTIL THE ABOVE VIOLATIONS ARE CORRECTED.
7. The tin roof cover at the rear of the dwelling was also ILLEGALLY CONSTRUCTED WITHOUT A BUILDING PERMIT.
8. A certified survey map prepared by Donald McIntosh shows the addition with a 4.36 to 4.50 FOOT SIDE YARD SETBACK and a 3.36 to 3.50 FOOT OPEN CLEARSPACE YARD in lieu of the minimum 8 FOOT SIDE YARD SETBACK AND 4 FOOT OPEN CLEARSPACE

Mr. Don McIntosh
Page 3
January 10, 1994

YARD as required by Chapter 25 (Zoning Code), Article 4 (RS, Single Family Residential Districts), SECTION 25-124 (a)(1)(Minimum yards) and Article 1 (General Provisions), Division 10 (Yard and Open Space Regulations), Section 25-66 (a)(1)(Projections into required yards and open spaces), respectively.

9. The variance application was filed with the Planning Department on November 3, 1993.

Based on the above circumstances, there are no unusual or special circumstances related to the property or deprivation of substantial property rights which would necessitate the setback encroachments. The master bedroom addition plans were approved based upon ILLEGAL REPRESENTATIONS BY THE PETITIONER and CONSTRUCTION WHICH WERE NOT IN ACCORDANCE WITH THE APPROVED BUILDING PERMIT PLANS. In addition, the petitioner was notified by the Contractor and the Building Inspector that the ongoing work was illegal, a STOP WORK ORDER ISSUED, and the BUILDING PERMIT NULL AND VOIDED. As for the roof cover over the pool area, this was also ILLEGALLY CONSTRUCTED WITHOUT THE NECESSARY BUILDING PERMIT AND REQUIRED SETBACKS. Although the petitioner did not construct this illegal structure, the illegality of the structure does not meet this criteria for approval.

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 rectangular shaped parcel with a front and rear yard and two side yard setbacks as required by the Zoning Code.
2. The proposed master bedroom addition when approved by the Planning Department and the Department of Public Works under Building Permit #935253 represented that the addition would comply with the minimum setback requirements of the Zoning Code. The original dwelling complied with the minimum rear yard setback requirements, as such, the removal of the roof cover at the rear of the dwelling is also an alternative that the petitioner has.

Mr. Don McIntosh
Page 4
January 10, 1994

3. The applicant's do have available land area in which to comply with the minimum setback requirements as was originally approved under Building Permit No. 935253. The APPROVED condition prior to the applicant constructing the illegal improvements constitute the ability of the applicant to 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 and between adjacent properties.

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.

As a consequence of this denial action, the applicant shall remove the encroaching elements of the dwelling to meet with the minimum Zoning Code setback requirements. The removal of all the encroachments shall be completed within 6 months of receipt of this denial. The applicant shall furthermore submit a letter to the Planning Director demonstrating that compliance with the removal of the encroachments has been completed.

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:

Mr. Don McIntosh
Page 5
January 10, 1994

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

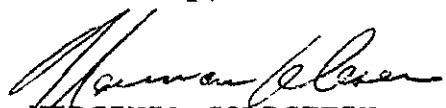
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to be the appellant, the Planning 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
0692Q

xc: DPW-Building, Kona Office
West Hawaii Office
Planning Commission