

VAR 570
COPY

CERTIFIED MAIL

February 24, 1994

Ms. Linda M. Larson
P.O. Box 391041
Kailua-Kona, Hawaii 96739

Dear Ms. Larson:

Variance Application WH(VAR 94-1)
Applicant: LINDA M. LARSON
Variance from Minimum SIDEYARD SETBACK Requirements
Tax Map Key: 7-4-016: 025

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 one story single family dwelling with a 6.90 foot side yard setback in lieu of the minimum 8 foot side yard setback as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (a)(1) (Minimum yards).

The subject property is located on the east side of Hanahanai Loop approximately 265 feet south of the Ulua'o'a Street/Hanahanai Loop intersection in the Kona Harbor View subdivision in Kealakehe, North Kona, Hawaii, TMK: 7-4-016: 025.

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 property is part of the Harbor View Subdivision consisting of 7,574 square feet of land area.

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2. The subject single family dwelling was constructed in 1988 under Building Permit No. 885119 issued on February 9, 1988 and closed on April 25, 1988 by the Department of Public Works, Building Division.
3. A survey map dated prepared by Donald McIntosh shows the existing dwelling with 6.90 side yard setback on the southwest side of the dwelling to the side property line. As such, the subject dwelling encroaches into the side yard setback at the FRONT OF THE DWELLING BY 1 FEET-1 AND 1/4 INCHES or 13 and 1/4 INCHES.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. 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 1988.
6. It appears that a construction staking error occurred in 1988 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 13 and 1/4 inches encroachment. No other evidence has been found to show otherwise.
7. It has been over 6 years since the construction of the existing dwelling which was approved by the County and the petitioner is trying to resolve a situation which she had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.
8. The variance application was filed with the Planning Department on DECEMBER 22, 1993.

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 a semi-rectangular parcel and an interior lot with a front and rear yard and two side yard setbacks.
2. The present 1 foot-1 1/4 inch encroachment into the southwest side yard setback is minuscule in relationship to the minimum required 8 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.
3. The applicant on his own volition is honestly trying to resolve this long standing problem which was not intentionally 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 6.90 feet from the the south side property line. Therefore, although only a 6.90 foot front yard setback is being provided against the south side property line, the encroachment is 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 side property line to the adjacent lot.

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Therefore, while the Zoning Code requires a minimum 8 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 was one objection from a surrounding property owner to the proposed variance request. This was from a property owner in the Kona Macadamia Acres subdivision, TMK: 7-4-14: 72 which is not adjacent to the subject property.


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

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xc: West Hawaii Office