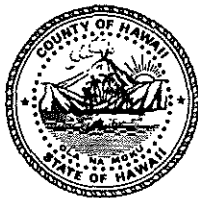


Stephen K. Yamashiro
Mayor



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

CERTIFIED MAIL

March 7, 1994

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

Dear Mrs. Yamasaki:

Variance Application WH(VAR94-2)
Applicants: BARRY & REBECCA HALL
Variance from Minimum SIDE & REAR YARD SETBACK Requirements
Tax Map Key: 7-5-28: 56

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 6.3 to 14.3 foot rear yard setback and 7.2 to 7.3 side yard setback; a guest house with a 7.1 to 7.2 side yard setback in lieu of the minimum 15 foot rear yard and 8 foot side yard setback as required by Chapter 25 (Zoning Code), Article 18 (UNPLANNED), Section 25-237 (b) (Other regulations)(b), in addition to allow a 2 foot eave space between the dwelling and the guest house in lieu of the minimum 6 feet as required by Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations), SECTION 25-69 (b)(Yards required for accessory building).

The subject property is located on the north side of Aloha Kona Drive approximately 300 feet east of the Kakalina Street/Aloha Kona Drive intersection in the Kona Heights Subdivision, Unit II, Hienaloli 5th, North Kona, Hawaii, TMK: 7-5-028: 056.

The Planning Director has concluded that the variance request from the minimum rear and side yard setback requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is a lot in the Kona Heights subdivision, increment II and is a single family residential subdivision.

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2. The subject single family dwelling was issued Building Permit No. 46103 on October 7, 1970. A swimming pool Building Permit No. 48951 was issued on July 7, 1971. A remodeling Building Permit No. 03561 was issued on April 23, 1979. No permit was found for the construction of the one story guest house which is approximately 348 square feet and has a bar sink in it.
3. A certified survey map dated November 23, 1993 prepared by Wes Thomas & Associates and shows the existing dwelling with a 6.3 to 14.3 foot rear yard setback and 7.2 to 7.3 side yard setback; a guest house with a 7.1 to 7.2 side yard setback; and a 2 foot eave space between the dwelling and the guest house.
4. The dwelling was completed in 1971 and the dwelling received final inspection by the Building Department.
5. For the dwelling rear yard setback problem, it appears that government contributed to this problem when it issued the 1971 remodeling permit. Therefore, when final inspection of the remodeling section was done, it appears that the construction of the remodeling was done in conjunction with the approved plans. For the west side property line setback deficiency, it appears that there was a siting error based on the topographical conditions and the 8 and 9 inch projections into the side yard setback are minuscule relative to the 8 feet required. However, the overhang of the roof is only 1.7 feet into the sideyard setback and this also appears to have been due to the siting problem of the original dwelling when it was constructed. As a condition of approval of this variance, the applicant shall have to either remove the portion of the overhang to comply with the Department of Public Works, Building Division requirements or appeal this to the Board of Appeals.
6. The petitioner relied upon the contractor and the building inspector who also apparently felt that all setbacks were being adhered to because there is no record in the Building or Planning Department that showed otherwise.
7. It appears that from all records in this particular case, the petitioner did not intentionally in any way cause the encroachment problem.
8. It has been over 22 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.

9. For the guest house, it meets all of the Zoning Code's minimum requirements with the exception of the bar sink and the 8 and 9 inch encroachments into the side yard setback and the eave separation between the house and the guest house. The guest house complies with the Housing Codes setback requirements. The sideyard setback encroachments are minuscule relative to the change in topography on the westerly side boundary line. However, the guest house did not have a building permit. As such, a condition of approval is being included to require the petitioner to obtain a building permit for the illegally constructed guest house with the requirement that the bar sink facilities to be removed.
10. The variance application was filed with the Planning Department on January 5, 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 rectangular parcel and an interior lot.
2. The present 7 to 9 inch side yard setback encroachments are 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. The applicant will be required to secure a building permit for the illegally constructed guest house.

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 7.2 and 7.3 feet from the west side property line. The illegally constructed guest house is situated 7.1 and 7.2 feet from the west side property line. There is approximately an 8 to 10 foot change in elevation between the subject property and the property to the west. The subject property is approximately 8 to 10 feet higher than the elevation at which the dwelling to the west is located. This in addition to the height of the existing one story dwelling of the structure where the roof overhang encroaches is approximately 23 to 25 feet above the ground level of the property to the west. The property to the north is vacant and is proposed for a residential subdivision. However, the 6.3 to 14.3 foot rear yard setbacks does provide for adequate light, air and circulatory functions between the dwelling and the rear property line. In addition, all other encroachments shall be required to be removed in conditions of approval. Therefore, the encroachments to the west side property line 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 west side property line.

Therefore, while the Zoning Code requires a minimum 15 foot rear and 8 foot side yard setbacks, in this particular case, the side yard setbacks encroachments are minuscule and the rear yard setback for the dwelling is also adequate 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.

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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. The applicant shall either remove the roof overhang encroachment or apply for a variance from the Building Board of Appeals. In the event, that the petitioner decides to remove the encroachment, a building permit must be secured from the Department of Public Works, Building Division.
4. The applicant shall have one (1) year from the effective date of this variance approval to secure the building permit for the illegally constructed guest house and final inspection to be completed within 2 years thereafter. In the preparation of the plans for the guest house, the bar sink facilities shall be shown to be totally removed. In addition, the plans shall include the provision of a landscape buffer to consist of plantings at a minimum height of 6 feet to be planted along the entire length of the rear property line. To ensure that the landscaping buffer is maintained an irrigation system shall also be included.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the

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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
DPW-Building Division (Kona)
Maryl Development