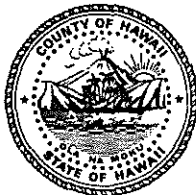


Stephen K. Yamashiro
Mayor



VAR 583

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

COPY

CERTIFIED MAIL

March 29, 1994 (REVISED)

Mr. Dennis Haserot
P.O. Box 2086
Kailua-Kona, Hawaii 96745

Dear Mr. Haserot:

Variance Application WH(VAR94-13)
Applicant: DENNIS HASEROT
Variance from Minimum FRONT YARD SETBACK Requirements
Tax Map Key: 7-3-33: 46

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 14.87 foot and 17.90 foot front yard setback and 9.0 and 12.5 foot open clearspace yards in lieu of the minimum 20 FOOT FRONT YARD SETBACK AND 14 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 (Supplementary Yard and Open Space Regulations), Section 25-66 (a)(1).

The subject property is located on the southeast corner of Kaiminani Drive and Kailana Place intersection in the Kona Palisades Subdivision, Unit II, Kalaoa 5th, North Kona, Hawaii, TMK: 7-3-033: 046.

However, there was one letter submitted in objection to the granting of this variance request. In accordance with the provisions of Section 25-27.0 of the Zoning Code, each person who qualifies as an "Interested Party" may request a review of the director's action on the variance application within ten day from the date of receipt of their being notified of the Planning Director's approval of your request.

Therefore, if a request for review is made by an "Interested Party", that request must be evaluated and presented to the County of Hawaii

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Planning Commission for its disposition. As such, the final approval of the variance will be effective on the above date, if no appeal of the Planning Director's approval decision is received by our office.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kona Palisades Subdivision consisting of 10,392 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 790443 on February 23, 1979.
3. A survey map dated January 31, 1994 prepared and certified by Donald McIntosh shows the existing dwelling with a 14.87 foot and 17.90 foot front yard setback and 9.0 and 12.5 foot open clearspace yard. As such, two corners of the subject dwelling encroaches into the front yard setback at the FRONT OF THE DWELLING BY 5 FEET AND 1 and 5/8 INCHES and 2 FEET AND 1 1/4 INCHES. The roof overhang encroaches into the open clearspace yard by 5 feet and 2.5 feet. Both encroachments are into the front yard setback along the frontage of the property on Kaiminani Drive.
4. The dwelling was completed in February of 1979 and received final inspection and the file closed by the Building Department.
5. At the time of construction of the dwelling, it appeared that all setbacks were being complied with. At no time, during the preconstruction or construction stages of the dwelling, did it appear that the dwelling failed to meet the minimum setback requirements.
6. The two corners of the existing dwelling are the only portions of the dwelling which encroaches into front yard setback while the remainder of the dwelling structure complies with all the other required setbacks. 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,

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the petitioner did not intentionally in any way cause the encroachment problem. In fact the petitioner, is the third owner of the subject property.

8. It appears that a siting error was created on the property, but it was so minor that it was not noticeable to either the petitioner, the contractor or the building inspector.
9. It has been over 15 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 a corner lot with two front yard and two side yard setbacks as required by the Zoning Code.
2. The present 5 FEET AND 1 and 5/8 INCHES and 2 FEET AND 1 1/4 INCHES and roof overhang encroachments into the open clearspace yard by 5 feet and 2.5 feet are for two corners of the dwelling along the frontage of the property on Kaiminani Drive. Therefore, with the adjacent roadway, the encroachments into the front yard setback are minuscule in relationship to the minimum required 20 feet front yard setback and 14 foot open clearspace yard. These minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the front 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 14.87 and 17.90 feet from the front property line along Kaiminani Drive. Therefore, although only a 14.87 and 17.90 foot front yard setback is being provided against the front property line, the encroachments are 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 front property line facing Kaiminani Drive.

Therefore, while the Zoning Code requires a minimum 20 foot front yard setback and 14 foot open clearspace yard, in this particular case, the encroachments are 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.

Although there was an objection to the variance request from a surrounding property owner, the objections were not directed toward the variance application request, but specifically addressing an off-site improvement issue. There were no objections from any of the participating government agencies.

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.

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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