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County of Hawaii

PLANNING DEPARTMENT

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VAR 568

CERTIFIED MAIL

April 11, 1994

Mr. Bradon Y. Kimura
76-6274 U'uku Place
Kailua-Kona, Hawaii 96740

Dear Mr. Kimura:

Variance Application WH(VAR94-25)
Applicant: BRADON KIMURA
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 7-6-20: 25

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 an 7.8 foot, 7.6 foot and 7.4 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 at the northwest end of U'uku Place cul-de-sac in the Kilohana Subdivision, Unit 1-A, Holualoa, North Kona, Hawaii, TMK: 7-6-20: 25.

PROPOSED REQUEST

1. The subject property is part of the Kilohana Subdivision, Unit 1-A consisting of 7,759 square feet of land area.

2. The subject single family dwelling was constructed in 1989 under Building Permit No. 895485 issued on April 19, 1989 and closed on October 24, 1989.

3. A survey map dated February 3, 1994 was prepared and certified by Richard Cassera shows the existing dwelling with 7.4, 7.6 foot side yard setback from the west side property line the dwelling and a 7.8 foot side yard setback from the east side property line. As such, the subject dwelling encroaches into the side yard setback by 7 and 1/4 inches, 4 and 7/8 inches and 2 and 3/8 inches. All encroachments are less than one feet.

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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 1989.

6. It appears that a minor construction staking error occurred in 1989 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 minuscule encroachments. No other evidence has been found to show otherwise.

7. It has been over 5 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.

8. The variance application was filed with the Planning Department on FEBRUARY 28, 1994.

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-triangular parcel and an interior lot and the end of a cul-de-sac with a front and rear yard and two side yard setbacks.

2. The present 7 and 1/4 inch, 4 and 7/8 inch and 2 and 3/8 inch encroachments into the east and west side yard setbacks are minuscule in relationship to the minimum required 8 feet side yard setback. These minuscule encroachments are 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 7.8 feet from the east side property line and, 7.6 feet and 7.4 feet west side yard property line. Therefore, although only a 7.8 foot, 7.6 foot and 7.4 foot side yard setbacks are being provided against the east and west side property lines, the encroachments 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 side property line to the adjacent lot.

Therefore, while the Zoning Code requires a minimum 8 foot side yard setback, 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.

There were no objections from any of the participating government agencies or any surrounding property owners.

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

VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office