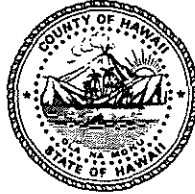


Stephen K. Yamashiro  
Mayor



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

VAR 591

COPY

#### CERTIFIED MAIL

May 20, 1994

Mr. Michael Krochina  
P.O. Box 4613  
Kailua-Kona, Hawaii 96745

Dear Mr. Krochina:

Variance Application WH(VAR94-14)  
Applicant: LIONA CONDOMINIUM  
Variance from Minimum SIDE YARD SETBACK Requirements  
Tax Map Key: 7-5-22: 65

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow the EXISTING 3 STORY CONDOMINIUM BUILDING having an open stairwell projection into the side yard setback with a 6.0 to 6.1 foot open clear space yard in lieu of the minimum 7 foot open clear space yard as required by Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations), Section 25-66 (a)(1).

The subject property is located on the makai (west) side of Alahou Street approximately 380 feet south of the Kalani Street/Alahou Street intersection in the Lono Kona Subdivision, Keopu, North Kona, Hawaii, TMK: 7-5-022: 065.

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 Lono Kona Subdivision consisting of 15,000 square feet of land area.

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2. The subject 3 story condominium structure was issued under Building Permit No. 920489 on March 9, 1992, however, final inspection and the certificate of occupancy has not been issued.
3. A survey map dated January 14, 1994, and prepared by Donald McIntosh shows the existing 3 story structure to have an open stairwell with a 6.0 to 6.1 foot open clear space yard in lieu of the minimum 7 foot open clear space yard as required by the Zoning Code. As such, the subject structure open stairwell encroaches into the side yard setback by .1 FOOT AND 10 AND 7/8 INCHES.
4. The Contractor 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 structure.
6. It appears that a construction error occurred when the additional stairwells were included on the south side of the structure. The landowner has represented that a very minor siting error was done at the time of construction with the 1 foot and 10 and 7/8 inch encroachments. No other evidence has been found to show otherwise.
7. The variance application was filed with the Planning Department on FEBRUARY 2, 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 rectangular parcel and an interior lot with a front and rear yard and two side yard setbacks.

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2. The present 1 foot and 10 and 7/8 inch encroachments of the open stairwells into the south side yard setback are minuscule in relationship to the minimum required 7 feet open clear space 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 structure on the subject property is presently situated 12.8 feet to the wall of the 3-story structure and 6.0 and 6.1 feet from the edge of the open stairwell to the side property line. Therefore, although only a 6.0 and 6.1 foot open clear space yard from the edge of the open stairwell to the side property line is being provided, 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 structure and the side property line to the adjacent lot.

Therefore, while the Zoning Code requires a minimum 7 foot open clear space 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 structure complies with the minimum yard setbacks requirements of the Zoning Code.

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There were no objections from any of the participating government agencies. However, the Kailua Village Design Commission included a condition of approval in their favorable recommendation to the Planning Director with respect to the landscaping of the south side of the structure. A condition of approval is being included to satisfy the Commission's concern.

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 submit a revised landscaping plan for the Planning Department's review and if substantially the same, would allow staff to process. However, if the plan is changed substantially, the landscaping plan shall be brought back before the Commission for its recommendation."
4. 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