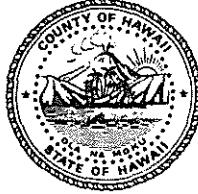


Stephen K. Yamashiro
Mayor



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 912

COPY

CERTIFIED MAIL

May 10, 1994

White Sands Construction
P.O. Box 383189
Waikoloa, Hawaii 96738-3189

Dear Sirs:

Variance Application WH(VAR94-22)
Applicant: WHITE SANDS CONSTRUCTION
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 6-8-18: 14

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 TWO STORY SINGLE FAMILY DWELLING with an 9.69 foot and 9.51 foot side yard setback in lieu of the minimum 10 FOOT SIDE YARD SETBACK as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (a)(2) (Minimum yards).

The subject property is located on the south side of Niu Haohao Place approximately 90 feet east of the Kalanu Street/Niu Haohao Street intersection in the Waikoloa Village Unit 1-C Subdivision, Waikoloa, South Kohala, Hawaii, TMK: 6-8-018: 014.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Waikoloa Village, Unit I-D Subdivision consisting of 10,000 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 935766 on August 9, 1993 and closed on January 19, 1994.

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3. A survey map dated February 11, 1994 was prepared and certified by Richard Cassera shows the existing two story dwelling with an 9.69 foot and 9.51 foot side yard setback. As such, the subject dwelling encroaches into the east side yard setback by 3 and 3/4 and 5 and 7/8 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 1993.
6. It appears that a construction staking error occurred in 1993 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 1 year since the construction of the existing dwelling 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 18, 1994. A simultaneous application from the Housing Code has been applied for from the Board of Appeals.

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 an interior lot and rectangular shaped parcel.
2. The present 0.31 and 0.49 foot encroachments into the side yard setback are minuscule in relationship to the minimum

required 10 foot side yard setback requirements. 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 their own volition are honestly trying to resolve this long standing problem which was not 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 9.69 and 9.51 feet from the east side side property line. Therefore, the subject dwelling encroaches into the east side yard setback by 3 and 3/4 and 5 and 7/8 inches. These encroachments are also only for a second story cantilevered portion of the two story dwelling. These encroachments into the side yard setback 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 dwelling to the east. Therefore, while the Zoning Code requires a minimum 10 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. A letter in support of the variance application was submitted from the adjacent land owner to the east of the subject property.

White Sands Construction
Page 4
May 10, 1994

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 secure a variance from the Board of Appeals for the Housing Code setback requirements.
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: Judith Jennet
DPW, Building Division, Kona Office
Board of Appeals (BOA 94-8)
West Hawaii Office