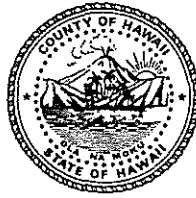


Stephen K. Yamashiro  
Mayor



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

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#### CERTIFIED MAIL

August 2, 1994

Mr. & Mrs. Paul Maddox  
76-810 Io Place  
Kailua-Kona, Hawaii 96740

Dear Mr. & Mrs. Maddox:

Variance Application WH(VAR94-40)  
Applicant: Mr. & Mrs. Paul Maddox  
Variance from Minimum FRONT YARD SETBACK Requirements  
Tax Map Key: 7-6-011: 027

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 24.74 to 24.77 FOOT FRONT YARD SETBACK in lieu of the minimum 25 FOOT FRONT YARD SETBACK as required by Chapter 25 (Zoning Code), Article 7 (Residential and Agriculture), SECTION 25-148 (Minimum yards)(a)(1).

The subject property is located on the south side of I'o Place approximately 130 feet west of the Hualalai Road/I'o Place intersection in Holualoa, North Kona, Hawaii, TMK: 7-6-11: 27.

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 Hualalai Estates Subdivision consisting of 21,781 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 00489 on July 31, 1973.
3. A survey map dated April 4, 1994 prepared and certified by Hajime Tanaka shows the existing dwelling with a 24.74 to 24.77 FOOT FRONT YARD SETBACK. As such, the subject dwelling encroaches into the front yard setback at the FRONT OF THE DWELLING BY 2 and 3/4 inches at the west

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corner and 3 and 1/8 inches at the east corner of the subject dwelling.

4. The dwelling was completed in 1973 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 front of the existing dwelling is the only portion 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, the petitioner did not intentionally in any way cause the encroachment problem. In fact the petitioner, is not the party who created the problem.
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 21 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.
10. The variance application was filed with the Planning Department on JUNE 6, 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 an interior and rectangular lot with a front yard, rear yard and two side yard setbacks as required by the Zoning Code.
2. The present encroachments of 2 and 3/4 inches at the West corner and 3 and 1/8 inches at the east corner of the subject dwelling are minuscule in relationship to the minimum required 25 front yard setback. In this particular circumstance, these minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the front yard.
3. The applicants on their own volition are 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 applicants 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 24.74 feet and 24.77 feet from the front property line along Io Place. Therefore, although only a 24.74 and 24.77 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 Io Place.

Therefore, while the Zoning Code requires a minimum 25 foot front yard setback, in this particular case, the encroachments are so minuscule that it will not visually or physically impact or be

Mr. & Mrs. Paul Maddox  
Page 4  
August 2, 1994

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

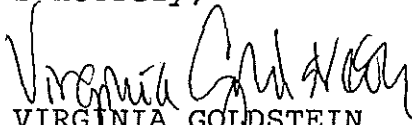
Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial 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  
Planning Director

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xc: West Hawaii Office