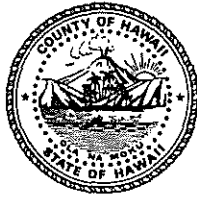


Stephen K. Yamashiro
Mayor



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

CERTIFIED MAIL

September 29, 1994

Mr. Steven Lim
Carlsmith Ball Wichman Murray Case and Ichiki
121 Waiianuenue Avenue
Hilo, Hawaii 96720

Dear Mr. Lim:

Variance Application WH(VAR94-53)
Applicant: Robert Triantos, Successor Trustee, E.L. Forde
Trust
Variance from Minimum SIDE YARD SETBACK Requirements
Tax Map Key: 6-8-005: 059

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow a portion of an EXISTING TWO STORY SINGLE FAMILY DWELLING with a 4.62 foot SIDE YARD SETBACK and a 0.26 foot open clear space yard in lieu of the minimum 10 FOOT SIDE YARD SETBACK and 5 FOOT OPEN CLEAR SPACE YARD as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (Minimum yards) (a) (2) (B).

The subject property is located on the east side of Lua-Kula Street directly east of the Lua-Kula Street/Lua Kula Place intersection in the Waikoloa Village Subdivision Unit I-A, South Kohala, Hawaii, TMK: 6-8-005: 059.

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 Waikoloa Village Subdivision, consisting of 10,993 square feet of land area. The subject property is a triangular parcel. The parcels shape is not typical of the lots in the subdivision and the zoning setbacks for this lot would be 1 front yard and 2 side yards.

13326

OCT 12 1994

Mr. Steven Lim
Page 2
September 29, 1994

2. The subject 2-story single family dwelling was constructed under Building Permit No. 61177 issued on November 18, 1974.
3. A survey map dated January 26, 1994 was prepared and certified by Donald McIntosh shows the existing dwelling with a 4.62 foot SIDE YARD SETBACK and 0.26 foot open clear space yard from the east side property line. As such, the subject dwelling encroaches into the side yard setback by 5.39 feet and a open clearspace yard for the eave of 3 and 1/8 inches. The portion of the dwelling which encroaches in to the setback area is at the southeast corner of the dwelling approximately 5 feet in width and 50 feet in length in a triangular fashion.
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 1974.
6. It appears that a construction staking error occurred in 1974 when the dwelling was constructed in the siting of the structure on the property. It also appears that a siting error was done at the time of construction with the encroachments. No other evidence has been found to show otherwise. The property's triangular shape, its location adjacent to the Waikoloa Village Golf Course and the sloping topography of the property are circumstances which may have lead to the incorrect siting of the dwelling.
7. It has been over 20 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 AUGUST 9, 1994.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the

Mr. Steven Lim
Page 3
September 29, 1994

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 present 5.39 feet and a open clearspace yard for the eave of 3 and 1/8 inches encroachments into the east side yard setback will not have a significant effect on the adjacent property which is the Waikoloa Village Golf Course. The eastern side property line of the subject property faces the back of the green of the golf course. In addition, there is a heavy landscaping strip along the eastern boundary which shields the existing dwelling from the golf course. Additionally, the existing dwelling lies behind the green approximately 100 feet from the green. Therefore, the encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the side yard.
2. 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.
3. 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 building 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 5.39 feet and a open clearspace yard for the eave of 3 and 1/8 inches

Mr. Steven Lim
Page 4
September 29, 1994

encroachments from the east side property line.

Therefore, although only a 5.39 feet side yard setback and a open clearspace yard for the eave of 3 and 1/8 inches are being provided against the east side property lines, the encroachments are visually shielded by the heavy landscaping strip along the length of the eastern boundary line. In addition, the open space to the rear portion of the green of the golf course minimizes the impact of the encroachments. Therefore, the granting of this variance will not diminish the ability for adequate light, air and open space between the existing dwelling and the side property line to the adjacent lot.

As such, while the Zoning Code requires a minimum 10 foot side yard setback, in this particular case, the encroachments 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. The petitioner shall secure approval of the Housing Code variance from the Board of Appeals.

Mr. Steven Lim
Page 5
September 29, 1994

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

RHY:rld
1132Q

xc: West Hawaii Office