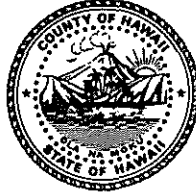


Stephen K. Yamashiro
Mayor



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 678

CERTIFIED MAIL

February 6, 1995

Mr. Robert Lotito, Jr.
P. O. Box 1011
Capitola, GA 95010

Dear Mr. Lotito:

Variance Application (VAR 94-64)
Applicant: Robert Lotito Jr.
Variance from Minimum Side Yard Setback Requirements
Tax Map Key: 7-5-27:19 **TMK: 7-8-019:001**

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 a 6.7 foot SIDE YARD SETBACK and 3.7 foot OPEN CLEARSPACE YARD in lieu of the minimum 10 foot SIDE YARD SETBACK and 5 foot OPEN CLEARSPACE YARD as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 Minimum yards)(a)(2)(B) and Article 1, Division 10 (Supplementary Yard and Open Space Regulations), SECTION 25-66 (Projections into required yards and open spaces)(a).

A survey conducted by Richard H. Cassera, Professional Land Surveyor, Certificate # 7275 was conducted July 6, 1994, shows the sideyard setback encroachment of 3.3 feet in addition to a lanai and carport roof encroachment of 1.3 feet into the clear space requirement.

The subject property is located on the south side of Puuiki Road in the Puuloa Subdivision, Keauhou, North Kona, Hawaii.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The Residence and carport were constructed and completed in 1971 by a prior owner. The setback violations went unnoticed by the previous owner, possibly due to the "skewed" placement of the structure on the lot.
2. The encroachment of the carport into the setback area on the westerly sideyard is a triangle measuring approximately 3.3 feet. The total area of the encroachment is approximately 8 square feet. The encroachment into the open clearspace yard is 1.3 feet.
3. The violation is minor in magnitude since it does not occur along the full sideyard of the structure. The average setback distance along the easterly side of the structure is in excess of the code requirements and does not adversely effect the adjacent property.

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. Any architectural alterations to the dwelling to conform with the minimum code requirements would create undue and excessive hardship to the applicant.
2. Cutting back the carport structure to conform to the setback requirements would make the carport unusable for its intended purpose. In like manner the removal of the minor lanai overhang above the garage would be unreasonable.

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.

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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.

Therefore, while the Zoning Code requires a minimum 8 foot side yard setback, in this particular case, the encroachment is such that it will not significantly 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 was no objection from any surrounding property owners to the proposed variance request.

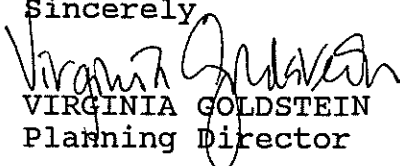
The encroachment into the required 10 foot side yard is a violation of Section 11-18 of the Hawaii County Housing Code. In order to resolve this encroachment a variance from the Housing Code must also be secured from the Board of Appeals under Section 11-13 of the Hawaii County Code.

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. All other applicable State and County rules and regulations shall be complied with.
3. This variance approval is only for encroachment violations to the Zoning Code, Chapter 25, of the Hawaii County Code.
THIS IS NOT AN APPROVAL FOR VIOLATIONS TO THE HAWAII COUNTY HOUSING CODE.

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

NO:mjs/WP60/LOTITO
xc: West Hawaii Office
Mr. Morris Kimura