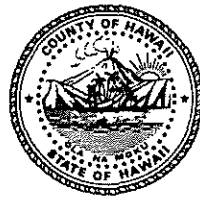


VAR 642



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

April 4, 1995

Mr. Don McIntosh
P.O. Box 1686
Kailua-Kona, Hawaii 96745

Dear Mr. McIntosh:

Variance Application WH(VAR95-09)
Applicant: James & Gladys Smith
Consultant: Don McIntosh
Variance from Minimum REAR YARD SETBACK Requirements
Tax Map Key: 7-7-019: 059

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of variance request No. 642 to allow a EXISTING ONE STORY SINGLE FAMILY DWELLING with a 17.96 FOOT REAR YARD SETBACK in lieu of the minimum 20 FOOT REAR YARD as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential Districts), SECTION 25-124 (Minimum yards)(a)(2)(A).

The subject property is located at the end of Koana Way approximately 210 feet south of the Koana Way/Emalia Place intersection in the Kuakini Heights Subdivision, Unit II, North Kona, Hawaii, TMK: 7-7-019: 059.

The Planning Director has concluded that the variance request from the MINIMUM REAR YARD SETBACK requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kuakini Heights consisting of 11,321 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 48462 on May 26, 1971 and completed in 1972.
3. A survey map prepared on December 2, 1994 by Don McIntosh shows the west corner of the existing ONE STORY SINGLE

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FAMILY DWELLING with a 17.96 FOOT REAR YARD SETBACK. As such, a corner of approximately 4.4 square feet of the subject dwelling encroaches into the west rear yard setback by 2.04 feet.

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 1971.
6. It appears that a construction staking error occurred in 1971 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 23 years 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 13, 1995.

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 Flag Lot shaped parcel.
2. The present corner encroachment of 2.04 of approximately 4.4 square feet into the rear yard setback is minuscule in relationship to the minimum required 20 foot rear yard setback requirements. These minuscule encroachment is not perceptibly visible that it could be readily detected or seen as encroachments into the rear yard.

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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.
2. The corner portion encroachment of 2.04 feet is so minor in nature in this instance and thus would have no impacts on adjacent properties. In addition, this encroachment into the rear yard setback is so minuscule and is not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and rear property line.
3. Therefore, while the Zoning Code requires a minimum 20 foot rear 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 dwelling complies with the minimum yard setbacks requirements of the Zoning Code.
4. 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.


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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