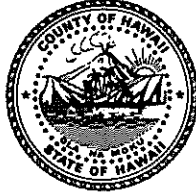


Stephen K. Yamashiro
Mayor



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 643

CERTIFIED MAIL

April 10, 1995

Mr. Charles J. Bright
c/o Savio Realty, Ltd.
162 Kinoole St.
Hilo, HI 96720

Mr. Lanny Roy Pihlman
General Delivery
Mountain View, HI 96771

Dear Mr. Bright & Mr. Pihlman:

Variance Application No. 643 (94-75)
Landowner: LANNY ROY PIHLMAN
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 1-1-30: 141

After reviewing the complete application, the Planning Director's action is to grant the variance request and approve the open deck roof line projection of the existing single family dwelling with a 12.3 SIDE YARD OPEN CLEARSPACE SETBACK in lieu of the minimum 14 feet required by Zoning Code sec. 25-66(a).

Based on the following findings, the Planning Director has concluded that the variance request from the minimum open side yard clearspace setback requirement should be approved:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Parcel 141 is located in the subdivision of Fern Acres Vacation Estates, Keaau, Puna, Hawaii, TMK: 1-1-30: 141. The lot area is three acres.
2. The subject single family dwelling was issued Building Permit No. 801338 (opened: 5/23/80; closed: 5/24/94); the former landowner of par. 141 is listed as Peter J. Leonard. The dwelling structure received all necessary approvals of the Department of Public Works - Building Division.

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3. Survey map (6/29/94) prepared by licensed land surveyor Robert S. Bright shows the existing SINGLE FAMILY DWELLING with a 12.5 foot to 25 foot side yard setback. As shown, the dwelling's open deck roof line projection encroaches into the setback of the south side yard clearspace by 1.7 feet.
4. According to the current landowner, Pihlman, he purchased parcel 141 from Leonard approximately ten years ago; the purchase included the as-built dwelling, and the conveyance was completed without a land survey. It appears that Pihlman purchased par. 141 without notice of the illegal encroachment of the side yard clearspace.
5. In 1980 plans were submitted to the Planning Department for building permit approval. Department approval of these plans would have been contingent upon a site plan representing compliance with all minimum setbacks required of the proposed dwelling. It has been approximately 15 years since the construction of the existing dwelling was approved by the County.
6. Extrapolating from the complete application, the 1.7 feet roof line encroachment appears to be an error in the construction staking and siting of the dwelling on parcel 141. A review of the record on this lot did not find evidence to indicate otherwise.
7. The petitioner is trying to resolve a situation which he had no control over or notice of, and in good faith the petitioner submitted a certified survey to ensure the disclosure of all facts concerning the dwelling encroachment.
8. The variance application was filed with the Planning Department on FEBRUARY 15, 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 narrow three acre rectangular shaped lot (125' X 1045.44').

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2. The roofline encroachment is an open projection within Zoning Code sec. 25-66(a). The projection encroaches 1.7 feet into the side yard and reduces the required 14 feet open side yard clearspace setback to 12.3 feet. In comparison, the encroachment of the required clearspace setback is minimal; as a result, the roof line projection is minor because it is not perceptibly visible or readily detected as an encroachment 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 variance application has not found any deliberate or intentional grounds in allowing the encroachments to occur.

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 have adequate air and light circulation between structures and property lines. The existing dwelling on the subject property is presently situated from 12.5 feet to 25 feet from the south side property line. Therefore, the subject dwelling encroaches into the north side yard setback by 1.7 feet. The encroachment is only a corner portion of the existing dwelling. The encroachment into the side yard setback are minor and are not visually perceptible that will diminish the requirements for adequate light, air and open space between the existing dwelling and the adjoining lots. Therefore, while the Zoning Code requires a minimum 14 foot open side yard clearspace setback, in this particular case the encroachments are minor and does not appear to have a visual or physical impact or be adverse to the adjacent properties with the granting of this variance. The rest of the existing dwelling complies with the minimum yard setback requirements of the Zoning Code.

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Written objections were not submitted from any of the participating government agencies or any surrounding property owners.

Based on the foregoing findings, the 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 variance approval shall be recorded in the conveyance document of the subject property and a copy of this document shall be submitted to the Planning Department within a year from the effective date of the variance approval.
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.

Should you have any questions, please contact Earl Lucero of this department at 961-8288.

Sincerely,



VIRGINA GOLDSTEIN
Planning Director

EML:mjs
6273D

xc: West Hawaii Office