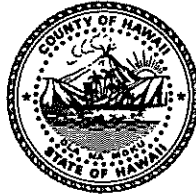


Stephen K. Yamashiro
Mayor



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

P 008 113 494
May 16, 1995

Mr. Gary Vancil
P.O. Box 1837
Kailua-Kona, HI 96745

Dear Mr. Vancil:

Variance No. 654
Variance Application WH(VAR94-74)
Applicant: STEVEN SHERMAN
Agent: Gary Vancil
Variance from Minimum FRONT AND SIDE YARD SETBACK Requirements
Tax Map Key: 7-7-003: 040

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request to allow an EXISTING SINGLE FAMILY DWELLING with a 18.18 foot Front Yard setback and 4.31 foot Side Yard setback with 1.27 open clearspace yard and a Spa/wood deck with a 3.94 to 4.14 Side Yard setback in lieu of the minimum 25 FOOT FRONT YARD, 15 FOOT SIDE YARD AND 10 FOOT SIDE YARD OPEN CLEARSPACE respectively, as required by Chapter 25 (Zoning Code), Article 7 (RA, Residential and Agricultural Districts), SECTION 25-148 (a)(1)(2)(Minimum yards).

The subject property is located on the north side of Pele Nike Drive approximately 300 east of the Pele Nike Drive/Ono Road intersection, North Kona, Hawaii, TMK: 7-7-003: 040.

The Planning Director has concluded that the variance request from the MINIMUM FRONT and SIDE YARD SETBACK requirements should be DENIED, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consisting of approximately 25,838 square feet is situated in the Residential-Agricultural - .5 acre (RA-.5a) zone district.

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2. The subject single family dwelling was issued Building Permit No. 38535 on April 24, 1968. Building Permit No. 38535 shows the dimensions of the approved dwelling to be 56 feet by 38 feet (2,128 square feet) and a floor area total of 2,774 square feet. There is a difference between the dimensions total and the floor area total. The distance to the nearest interior lot boundary is stated as "15 feet."
3. A Building Permit No. 02096 was issued for a carport on October 5, 1976. Building Permit No. 02096 shows the approved detached carport with dimensions of 24 feet by 24 feet for a total of 576 square feet. The permits also shows the distance to the nearest interior lot boundary to be "25 feet." This detached carport is located to the south side of the existing dwelling.
4. Building Permit No. 885662 was issued on July 20, 1988 for a swimming pool. The permit also shows the distance to the nearest lot boundary to be "15 feet."
5. These are the only building permits on record for the development on the subject property.
6. A certified survey map prepared by Donald McIntosh dated October 30, 1994 shows the existing dwelling with a 18.18 foot Front Yard setback and 4.31 foot Side Yard setback with 1.27 open clearspace yard and a Spa/wood deck with a 3.94 to 4.14 Side Yard setback. Therefore, the illegally constructed portion of the existing dwelling encroaches 6.82 feet into the front yard setback and 10.69 feet into the Side yard setback into the front open clearspace yard setback. The illegally constructed spa and wooden deck encroaches 11.06 feet to 10.59 feet into the side yard setback.
7. The Department of Finance, Real Property Division records show that the original single family dwelling had a carport on the north side. This may be consistent with the approved plans, but there are none in existence to prove such. Even if the plans did show what is shown on the Tax Office records, the permit issuance indicates that all minimum setbacks would have had to be complied with. Considering this scenario, the enclosure of the carport and the spa/deck was done illegally as there are no permits to indicate its approval.

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8. The approved plans for the original dwelling are no longer available, as such, we are unable to ascertain exactly the approved dimensions and square footages of the existing dwelling by the building permits actually issued.
- 9 The subject property has approximately 189.68 feet along Pele Niki Drive.
10. The variance application was filed with the Planning Department on January 18, 1995 with the petitioner requesting an extension of time for the submittal of additional information.

Based on the above, there are no unusual or special circumstances related to the property or deprivation of substantial property rights which would necessitate the front and side yard setback variance. The additional structural additions to the existing dwelling were illegally constructed based on the official records. There was no evidence submitted which shows or justifies the necessity of the approval of the variance relative to any special or unusual circumstances related to the property.

Therefore, considering the foregoing facts, it is determined that there are no 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 irregular shaped parcel with a front and rear yard and two side yard setbacks as required by the Zoning Code.
2. The property is large enough that any additions to the single family dwelling could be done so by meeting the minimum Zoning Code setback requirements. Therefore, the applicant has other alternatives in which to construct and meet with the minimum front yard setback requirements.
3. The applicants ability to comply with the minimum front and side yard setback requirements is available without a variance and would not necessitate the Planning Director's evaluation of the applicants responsibility to comply with any Restrictive Covenants attached to the subject property. Therefore, although it will involve costs for the petitioner, it is not expected to be an unreasonable option due to the circumstances.

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Based on the above cited considerations, there are other reasonable alternatives that would resolve the difficulty.

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. If the illegal construction had been put in the form of plans and a building permit properly applied for, the applicant would not have had this problem. The illegal improvements would not have been approved because the plans would have shown that the improvements would encroach into the minimum front and side yard setbacks. The illegally constructed improvements are self imposed and as exists do not provide for the adequate air, light circulation and physical separation as the encroachments impacts upon the adjacent property to the north.
2. Furthermore, any covenants which prohibits encroachments into the front and side yard setback cannot be ignored. Therefore, in light that this is a variance request it is incumbent upon the applicant to show evidence with respect to the variance criteria and this has not been demonstrated, especially in view of any Restrictive Covenants that may be attached to the subject property.

Based on the foregoing findings, this variance request would not 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.

Therefore, this variance request for the requested variances are hereby denied.

In view of the denial of the variance requests, the applicant shall be required to remove the encroachments into the front and side yard setback requirements within six (6) months from the date of receipt of this denial decision.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and

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2. Ten copies of the completed application form and contents, including a statement of the specific grounds for the appeal.

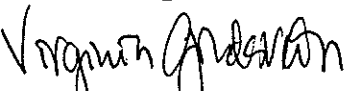
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to be the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please feel free to contact Royden Yamasato of our office at 329-4878.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

RHY:rld
1312Q

Enc: Copy of PD Appeal Application form

xc: DPW-Building, Kona Office
West Hawaii Office
Donham Walker