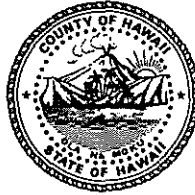


Stephen K. Yamashiro
Mayor



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

JUN 21 1995

CERTIFIED MAIL

Mr. Robert D. Triantos, Esq.
P.O. Box 1720
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

VARIANCE NO. 660
Variance Application WH(VAR95-32)
Applicant: RAY NAGEL
Agent: Robert Triantos
Variance from Minimum REAR & SIDE YARD SETBACK Requirements
Tax Map Key: 7-3-031: ~~012~~ 021

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your VARIANCE NO. 660 to allow an existing single family dwelling with an open deck and roof overhang having a 7.9 foot open space and a open carport with a 4.2 foot open space in lieu of the minimum 14 foot and 5 foot open space respectively as required by Zoning Code, SECTION 25-237 (b) and Section 25-66(a).

The subject property is located at the end of Pa'ani Place, approximately 180 feet south of the Kaiminani Drive/Pa'ani Place intersection in the Kona Palisades Subdivision, Unit I, North Kona, TMK: 7-3-031: 021.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kona Palisades Subdivision consisting of 10,546 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 50576 on December 9, 1971.
3. The carport/workshop was issued Building Permit No. 04869 on March 24, 1981 and closed on November 2, 1981.

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4. A survey map prepared by Wes Thomas & Associates shows the EXISTING SINGLE FAMILY DWELLING with an open deck having a 10.5 foot open space with a roof overhang having a 7.9 foot open space and a open carport with a 4.2 foot open space. As such, the open deck and roof overhang encroaches into the rear yard by 3.5 feet and 6.1 feet respectively. A minuscule corner portion of the open carport encroaches into the side yard by 0.8 feet.
5. The topography of the property slopes down from Pa'ani Place. As such, the deck and roof overhang at the rear of the property is approximately 14 to 16 feet above the existing grade. The existing dwelling on the adjacent property to the northeast is situated to the rear of the parcel. As such, the carport overhang is only for a minuscule portion of the building.
6. The site plan submitted also shows wall and landscaping encroachments into the Pa'ani Place right-of-way.
7. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling deck and carport/workshop.
8. 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 existing dwelling/deck and carport/workshop addition in 1971 and 1981.
9. It appears that a staking error occurred in 1971 and in 1981 which resulted in the existing encroachments. No other evidence has been found to show otherwise.
10. It has been over 24 years since the construction of the existing dwelling/deck and 14 years since the carport/workshop 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.
11. The variance application was filed with the Planning Department on APRIL 28, 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

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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 interior lot and Triangular in shape.
2. The existing encroachments into the rear yard are 3.5 feet for the deck and 6.1 feet for the roof overhang and 0.8 feet into the side yard for a corner portion of the carport building.
3. The applicant on his own volition is honestly trying to resolve this long standing problem which was not created by him. 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 present encroachments into the rear yard by 3.5 to 6.1 feet for the open deck and roof overhang still afford the availability of light, air and physical circulation although not to the minimum standards.
3. The availability for light, air and physical circulation is also enhanced by the elevated construction which allows for more circulation between the properties. Additionally, the encroachments will not diminish the ability for adequate light, air and open space between the existing carport/workshop and the dwelling to the northeast.

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4. The difference in topographical change between the two properties as well as the location of the existing dwellings on the adjacent lot to the northeast are also considerations in this matter.
5. Therefore, while the Zoning Code requires a minimum 14 foot open space and 5 foot open space, 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.
6. In addition, the applicant has represented that a structural connection from the dwelling to the carport/workshop building will be provided by the applicant to meet the Zoning Code requirements. A condition of approval is being included to ensure that this is completed. In addition, a condition of approval is being included to ensure that all encroachments beyond the property lines are removed.
7. 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 removal of the encroachments within the Pa'ani Place right-of-way and adjacent properties shall be removed within 1 year from the effective date of approval of this variance. A certified survey prepared by a certified surveyor in the State of Hawaii shall be submitted showing the removal of all encroachments within 1 year from the effective date of approval of this variance.

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3. 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.
4. The applicant shall apply for and secure a building permit to structurally connect the dwelling with the carport/workshop building within 1 year from the effective date of approval of this variance.
5. 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 feel free to contact Royden Yamasato of this department.

Sincerely,

Rodney K. Nakano

for VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office