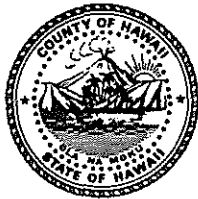


Stephen K. Yamashiro
Mayor



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
Z 416 229 157

August 3, 1995

Mrs. Contilia K. Spartin
75-365 Aloha Kona Drive
Kailua-Kona, HI 96740

Dear Mrs. Spartin:

Variance Application No. 674 (VAR 95-39)
Applicant: CONTILIA K. SPARTIN
Variance from Minimum FRONT YARD CLEARSPACE
REQUIREMENTS of OPEN PROJECTIONS
Tax Map Key: 7-5-29:47

After reviewing the complete application, the Planning Director's action is to grant the variance request for the attached open carport of the existing single family dwelling with a minimum FRONT YARD CLEARSPACE of 6.5 feet, more or less, required of OPEN PROJECTIONS in lieu of the minimum 10 feet front yard clearspace required by Zoning Code Secs. 25-237(b), 25-157, and 25-66(a).

The Planning Director's approval of the variance request is based on the following findings.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Location Description. Parcel 47 is a 8,647 square foot lot located at the northeast corner of Aloha Kona Drive and Waiola Place, at 75-365 Aloha Kona Drive, Kailua-Kona, HI, of Kona Heights Subdivision, Hienaloli, North Kona, Hawaii. The county zoning is Unplanned (U); the state land use is "Urban".

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2. Parcel 47 Improvements of Record. According to the applicant and/or County Real Property Tax records the existing one story single family dwelling was constructed under Building Permit No. 821165 (opened: 6/29/82; closed: 11/18/82). The applicant was an owner-builder and is the first owner of the subdivided parcel.
3. Setback & Clearspace Conditions & Requirements. The drawn-to-scale site plan submitted by the applicant shows the existing single family dwelling and the ATTACHED CARPORT with a 6.5 feet front yard clearspace of the carport's open projection. The required minimum front yard clearspace setback for an open projection is 10 feet, measured from the front property line to the structure's open projection line, a roof eave for example. As shown on the site plan, the open carport encroaches into parcel 47's front yard minimum clearspace by approximately 3.5 feet, more or less.
4. Existing Carport Condition. According to the applicant, Spartin, the attached open carport was constructed after the dwelling's completion. Spartin hired Dell Huddleston, the contractor that built her dwelling; she does not know if Huddleston was a licensed or unlicensed contractor. According to Spartin, Huddleston built the carport while she was in Europe traveling for two years; as a result, Spartin alleges that she relied on Huddleston to obtain the necessary permits and to construct the carport to code requirements. The carport was completed by Huddleston in 1984, approximately. Huddleston has since relocated to another state, possibly Oregon. Records of the Department of Public Works Building Division do not confirm that the carport was built under permit. The applicant alleges that she has submitted plans and a building permit application for the illegally built carport. The setback encroachment was discovered because the applicant is in the process of selling the parcel.
5. Error: Construction Staking/Siting. Extrapolating from the complete variance application, the encroachment appears to be an error in the construction staking and siting of the carport on parcel 47. A review of the record on this lot did not find contrary evidence.

6. Landowners Good Faith Efforts. The applicant is trying to resolve a situation which she had no control over when she relied on a contractor to build the open carport. The applicant in good faith submitted or disclosed all facts concerning the encroachment.

Therefore, in considering the foregoing facts, 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.

INTENT AND PURPOSE

1. Adequate Light & Air Circulation, Open Space. The intent and purpose of requiring building setbacks within a subdivision is to have adequate air and light circulation between structures and property lines.
2. Minimal Cumulative Effect. Despite the encroachment in the approximate 11 year period preceding the variance application no complaints have been made to the Planning Department of the setback violation of parcel 47. The physical and visual encroachment appears to be minor because it has not been reported as a complaint either by lay person or building inspector. The apparent negligible effect of the encroachment does not appear to affect the requirements for adequate light, air and open space between the existing dwelling and the adjoining lots. Although the Zoning Code requires a minimum front yard clearspace setback for the dwelling's open carport projection, in this case granting a setback variance is for an encroachment that does not appear to have a visual, physical or adverse impact to the adjacent properties. Written objections were not submitted from any of the participating government agencies.

Based on the foregoing findings, granting 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; it will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

Mrs. Contilia K. Spartin
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This variance request is approved, subject to the following conditions:

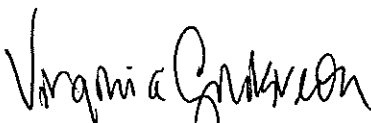
1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Recordation of Variance Approval; Payment of Filing Fees Requirements. The variance approval with conditions shall be recorded as a part of the conveyance document of parcel 47. The Planning Department will submit the variance approval and conditions for recordation with the Registrar - Bureau of Conveyances - State of Hawaii.
3. The applicant/landowner is to pay for all recordation costs and fees; and, submit or prepare all information or documents needed by the Planning Department to record the variance approval and conditions in parcel 47's conveyance document.
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 can proceed to declare the variance permit null and void. For any questions on this matter, please contact Earl Lucero of the Planning Department, 961-8288.

Review of Director's Action; Interested Party. Zoning Code Sec. 25-27(a)(3), provides that an "interested party" may request Planning Commission review of the director's action.

The request must be made within ten (10) working days after notice of the director's decision, in writing. Consequently, the variance becomes effective after the ten day appeal period has passed; and, an interested party does not request a review of the director's action. Should a request be made we will inform you of the procedures that must be complied with.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EML:mjs
6580D

xc: West Hawaii Office
Real Property Tax Office