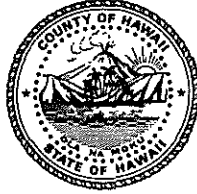


Stephen K. Yamashiro  
Mayor



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

AUG 29 1995

Mr. Robert Triantos  
Carlsmith, Ball, Wichman, Case & Ichiki  
P.O. Box 1720  
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

VARIANCE NO. 681  
Variance Application WH(VAR 95-52)  
Applicant: WALTER P. & VELMA M. PETERSON  
Variance from Minimum SIDE YARD Requirements  
Tax Map Key: 7-5-005:036

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of VARIANCE NO. 681 to allow an EXISTING TWO STORY SINGLE FAMILY DWELLING with a SIDE YARD of 9.7 to 9.8 FEET in lieu of the minimum 10 foot side yard as required by Chapter 25, Article 4, Section 25-124(a)(2)(A).

The subject property is located on Lot 25 in the Kona Bay Estates Subdivision, at Lanihau Nui, North Kona, Hawaii, TMK: 7-5-005:036.

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kona Bay Estates Subdivision consisting of 15, 169 square feet of land area.
2. The subject single family dwelling was issued a Building Permit No. 89654F on October 23, 1989 and closed on January 9, 1991. A second Building Permit No. 905858F for an office addition was issued on May 11, 1990 and closed on

06892

AUG 29 1995

January 9, 1991.

3. A survey map prepared by Wes Thomas Associates on June 13, 1995, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 9.7 to 9.8 feet side yard. As such, the subject dwelling encroaches into the east side yard by 2 and 3/8 to 3 and 5/8 inches into the required 10 feet side yard.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for 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 adhere to for the proposed dwelling in 1991.
6. It appears that a construction staking error occurred in 1991 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 4 years since the construction of the existing dwelling which was approved by the County and the petitioner is trying to resolve a situation which she had no control over and has honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
8. The variance application was filed with the Planning Department on JULY 20, 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. A survey map prepared by Wes Thomas Associates on June 13, 1995, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 9.7 to 9.8 feet side yard. As such, the subject dwelling encroaches into the east side yard

Mr. Robert Triantos

Page 3

AUG 29 1995

by 2 and 3/8 to 3 and 5/8 inches into the required 10 foot side yard is not perceptibly visible that it could be readily detected or seen as encroachments into the side yard.

2. 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.
3. 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. The existing dwelling on the subject property is presently situated with 9.7 to 9.8 feet side yard. As such, the subject dwelling encroaches into the east side yard by 2 and 3/8 to 3 and 5/8 inches into the required 10 foot side yard. These encroachments into the side yard are minor but are not visually perceptible that it will diminish the ability for adequate light, air and open space. Therefore, while the Zoning Code requires a minimum 10 foot side yard, in this particular case, the encroachments are minor 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 requirements of the Zoning Code.

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 Code and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare;

Mr. Robert Triantos  
Page 4  
AUG 29 1995

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 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.

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
a:\75005036

xc: West Hawaii Office