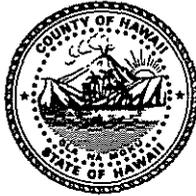


Stephen K. Yamashiro
Mayor



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 416 228 796

September 20, 1995

Mr. Jon Murai
Reid & Associates, Inc.
P. O. Box 1686
Kailua-Kona, HI 96745

Dear Mr. Murai:

Variance Permit No. 689 (VAR 95-50)
Landowner/Applicant: Frances J. Nelson
Request: Variance from Front Yard Setback and Front
Yard Clearspace Requirements of the Zoning Code
Tax Map Key: 7-7-11:01

After reviewing the complete application, the Planning Director's action is to grant the variance request for the existing single family dwelling with a front yard setback of 14.04 feet and a corresponding front yard clearspace of 7 feet required of open projection in lieu of the minimum 15 feet front yard setback and minimum 10 feet front yard clearspace required by the Zoning Code Secs. 25-157, 25-124(a)(1) and 25-66(a).

The Planning Director's approval of the variance request is based on the following finding's:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Location Description. Tax Map Key: 7-7-11:01 is a 9,527 square foot lot located at 77-6475 Walua Road at the northern corner of the Walua Road and Pualani Street intersection, approximately three (3) miles south of Kailua-Kona, on the eastern side of Kuakini Highway, Sunset View Terrace Subdivision, Holualoa, North Kona, Hawaii.

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2. Parcel No. 1 Improvements of Record. According to the applicant and/or County Real Property Tax records the existing single family dwelling with detached garage was constructed under Building Permit No. 38538 (dated April of 1968) by the existing property owner. It received all necessary approvals of the appropriate County agencies.
3. Setback and Clearspace Conditions and Requirements. The boundary survey sketch (11/17/94) prepared by Registered Professional Land Surveyor Donald C. McIntosh shows the existing single family dwelling with a 14.04 front yard setback and a corresponding front yard clearspace of 7 feet for the open projection. The required front yard setback is a minimum of 15 feet, measured from the front property line to the dwelling wall line; and, a front property line to the eave line of 10 feet.
4. Site Plan Conditions and Approval. In April 1968 plans were submitted to the Planning Department for building permit approval. Planning Department approval of these plans would be contingent upon a site plan representing compliance with all minimum setbacks required for the proposed dwelling. It has been approximately 27 years since the construction of the existing dwelling was approved by the County Building Division.
5. Error: Construction Staking/Siting. Extrapolating from the complete application, the encroachment appears to be an error in the construction staking and siting of the dwelling on parcel 1. A review of the records on this parcel did not find contrary evidence.
6. Landowners Good Faith Efforts. The property owner is trying to resolve a situation that they were unaware of and in good faith they submitted a certified survey to ensure the disclosure of 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 deprive 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 or development of the subject property.

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INTENT AND PURPOSE

1. Adequate Light and 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 27 years period preceding the variance application, no complaints have been made to the Planning Department concerning the setback violation on the subject property. The physical and visual encroachment appears to be minor since it has not been reported as a complaint either by a lay person or building inspector. The apparent negligible effect of the encroachment does not 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 setback for the dwelling wall line and a minimum front yard clearspace for the dwelling's open projection's, in this specific 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.

The rest of the existing dwelling complies with the minimum yard setback requirements of the Zoning Code. No written objections were received from any of the reviewing government agencies.

Based on the foregoing findings, granting the variance request would be consistent with the general purpose of the zoning district, intent and purpose of the Zoning and the Subdivision Control 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.

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.

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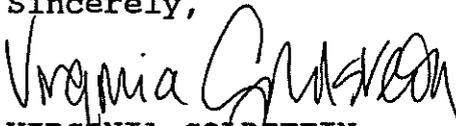
2. Resolution of Variance Approval; Payment of Filing Fees Requirement. The variance approval with conditions shall be recorded as a part of the legal description (deed) of the subject property. The applicant/landowner is to pay for all recordation costs and fees; and prepare and submit all information or documents needed by the Planning Department to record the variance approval in the subject property's legal description (deed). The Planning Department will submit the variance approval and conditions for recordation with the Registrar-Bureau of Conveyances-State of Hawaii.
3. Comply with all other applicable State and County rules and regulations.

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 Ed Cheplic of the planning Department at 961-8288.

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

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xc: West Hawaii Office
Real Property Tax Office
Mr. Frances Jean Nelson