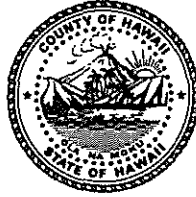


Stephen K. Yamashiro  
Mayor



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 364 305 156

December 5, 1995

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

Dear Mr. Triantos:

Variance Permit No. 717 (VAR 95-70)  
Applicant: Henry F. & Francis A. Gloy  
Variance From minimum front/side yard setback requirement  
of the Zoning Code, Chapter 25, Article 4,  
Section 25-124 (a)(2)(A)(B)  
Tax Map Key: 7-7-09:71, Lot 71

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow an existing two (2) story single family dwelling with side yard setback of 8.70 feet, front yard setback of 19.8 and 19.20 feet; open carport with 0.00 feet front yard setback and swimming pool with deck with a 0.00 feet yard setback in lieu of the required minimum twenty (20) front and ten (10) foot yard setback of Chapter 25, Zoning Code, Article 4, Section 25-124, (a)(2)(A)(B).

The subject property is located at the Sunset View Terrace Subdivision, Unit I at Holualoa 4th, North Kona, Hawaii, Tax Map Key: 7-7-09:71, Lot 71.

The Planning Director has concluded that the variance request from the minimum front and side yard setback requirement should be approved based on the following findings.

#### Special and Unusual Circumstances

1. The subject property is part of the Sunset View Terrace Subdivision consisting of 11,972 square feet of land area.

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2. The subject single family dwelling was issued Building Permit No. 45266 in 1970.
3. A survey map dated May 26, 1995, prepared and certified by Wes Thomas Associates shows the existing dwelling with a front yard setback of 19.80 feet and 19.20 feet. As such, the subject dwelling encroaches into the front yard setback at the front of the dwelling by .2 and .8 feet.

The open carport has a 0.00 front yard setback and the swimming pool has a 0.00 side yard setback.

4. The homeowners at that time received all the necessary Department of Public Works, Building Division approvals for the dwelling and swimming pool.
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 adhered to for the proposed dwelling and swimming pool in 1970.
6. It appears that a construction staking error occurred in 1970, when the dwelling and swimming pool were constructed, in the siting of the structure on the property. It also appears that a siting error was done at the time of construction with minor encroachments. No other evidence has been found to show otherwise.
7. It has been over 25 years since the construction of the existing dwelling and swimming pool, which was approved by the County, and the applicants are trying to resolve a situation which they had not control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.
8. No records for the construction of the open carport.

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 deprive the owner or applicants 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 a rectangular lot with a front yard, rear yard and two side yard setbacks as required by the zoning code.

2. The existing open carport must obtain an after-the-fact building permit.
3. The applicants on their own volition are honestly trying to resolve this longstanding problem which was not intentionally created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
4. Any architectural alternatives or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardship to the applicants 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 applicants when a more reasonable alternative is available by the granting of this variance application.

#### Intent and Purpose

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling of the subject property is presently situated 19.80 feet and 19.20 feet from the front property line. Therefore, although only 0.20 feet and .080 foot front yard setbacks are being provided against the front property line, the 0.20 & 0.80 feet encroachment is so minuscule and is not visually perceptible that it will not diminish the ability for adequate light, air and open space between the existing dwelling and the front property line.

Therefore, while the Zoning Code requires a minimum 20 - foot front yard setback, in this particular case, the encroachment is so minuscule 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 setback requirements of the Zoning Code.

There was no objection from any of the participating government agencies or 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 area's character and to adjoining properties.

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This variance request is approved subject to the following conditions:

1. The applicants, their 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 one (1) year from the effective date of approval of this variance.
3. Obtain a after-the-fact building permit for the open carport.
4. Obtain approval from Board of Appeals for all Housing and Building Code Violations.
5. All encroachments beyond the property must be removed within one (1) year from the effective date of this variance.
6. Should the County decide to widen Walua Road, the petitioner, their assigns or successors, would be agreeable to participate in any improvement district and if need be remove the existing carport at their own expense.
7. 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.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EC:dmo  
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cc: West Hawaii Office