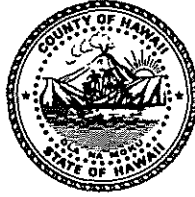


Stephen K. Yamashiro  
Mayor



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 364 320 483

October 16, 1995

Mr. Victor T. Nakamura  
Executive Director  
Hawaii Island Community Development Corporation  
99 Aupuni Street  
Suite 104  
Hilo, HI 96720

Dear Mr. Nakamura:

Variance Permit No. 700  
Applicant: Hawaii Island Community Development Corporation  
Variance From Zoning Code Minimum Rear Yard Setback Requirements  
Tax Map Key: 7-3-53:22, Lot 322

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 single family dwelling with a rear setback of 19 feet, 9 3/4 inches in lieu of the minimum twenty (20) feet rear yard setback of the Zoning Code, Section 2.5-124(a)(2)(A).

The subject property is located at Kalaoa View Estates Subdivision in North Kona, Hawaii, Tax Map Key: 7-3-53:22, Lot 322.

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

#### Special and Unusual Circumstances

1. The subject property is part of the Kalaoa View Estates Subdivision consisting of 10,028 square feet of land area.

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2. The subject single family dwelling was issued Building Permit No. 950608 in 1995.
3. A survey map dated July 19, 1995, prepared and certified by True North Survey shows the existing dwelling with a rear yard setback of 19 feet and 9 3/4 inches. As such, the subject dwelling encroaches into the rear yard setback at the rear of the dwelling by 2 1/4 inches.
4. The homeowners at that time received all the necessary Department of Public Works, Building Division approvals for the 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 adhered to for the proposed dwelling in 1995.
6. It appears that a minor construction staking error occurred 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 minuscule encroachments. No other evidence has been found to show otherwise.
7. The existing dwelling was approved by the County and the petitioner is trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.

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 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. The subject property is a rectangular lot with a front yard, rear yard and two (2) side yards setbacks as required by the Zoning Code.

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2. The present encroachment of 2 1/4 inches at the rear of the subject dwelling is minuscule in relationship to the minimum required 20 feet rear yard setback. In this particular circumstance, this minuscule encroachment is not perceptibly visible that it could be readily detected or seen as encroaching into the rear yard setback.
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 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

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 feet and 9 3/4 inches from the rear property line. Therefore, although only 19 feet and 9 3/4 inches rear yard setbacks are being provided against the rear property line, the 2 1/4 inch 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 rear property line.

Therefore, while the Zoning Code requires a minimum 20-foot rear 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.

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There was no objection from any of the participating government agencies or surrounding property owners.

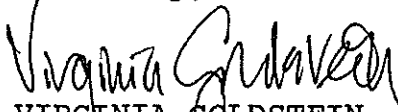
Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

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 one (1) 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.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EC:mjs

xc: West Hawaii Office