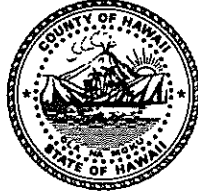


Stephen K. Yamashiro  
Mayor



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 364 320 389

October 18, 1995

Mr. Donald C. McIntosh  
P. O. Box 58  
Kailua-Kona, HI 96745-0058

Dear Mr. McIntosh:

Variance Permit (VAR 702)  
Applicant: Karen Kobayashi  
Variance From Minimum Front and Side Yard Setback  
Requirements of Zoning Code  
Tax Map Key: 6-4-21:56

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 one (1) story single family dwelling with a front yard setback of 14.2 feet and a side yard setback of 9.2 feet in lieu of the 20 foot front yard setback and 10 foot side yard setback requirements of the Zoning Code.

The subject property is located at 64-5243 Puu Nani Drive, Puu Nani Subdivision, Puu Kapu Homesteads, Waimea, South Kohala, Hawaii, Tax Map Key: 6-4-21:56.

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

#### Special and Unusual Circumstances

1. The subject property is part of the Puu Nani Subdivision consisting of 12,989 square feet of land area.

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Mr. Donald C. McIntosh  
Page 2  
October 18, 1995

2. The subject single family dwelling was issued Building Permit No. 905068 on December 28, 1989.
3. A survey map dated June 16, 1995, prepared and certified by Wes Thomas Associates shows the existing dwelling with a front yard setback of 14.2 feet and side yard setback of 9.2 feet. As such, the subject dwelling encroaches into the front yard setback at the front of the dwelling by 5.8 feet and the side yard setback by .8 feet.
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 1989.
6. It appears that a minor construction staking error occurred in 1989 when the dwelling was constructed in the siting of the structure on the property. It also appears that a minor 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 six (6) 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 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.

Mr. Donald C. McIntosh  
Page 3  
October 18, 1995

### Alternatives

1. The subject property is a "pie" shaped lot with a wide front yard, a narrow rear yard and two side yard setbacks as required by the Zoning Code.
2. The present encroachments of 5.8 feet in the front and .8 feet on the side of the subject dwelling is minor in relationship to the minimum required 20 foot front yard and 10 foot side yard setbacks. In this particular circumstance, this minor encroachment is not perceptibly visible that it could be readily detected or seen encroaching into the front and side setback.
3. The applicant on her own volition is honestly trying to resolve this longstanding problem which was not intentionally created by her. 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 14.2 feet from the front property line and 9.2 feet from the side property line. Therefore, although only 14.2 feet front and 9.2 foot side yard setbacks are being provided against the front/side property line, the 5.8 and .8 feet encroachment is so minor 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/side property line.

Mr. Donald C. McIntosh  
Page 4  
October 18, 1995

Therefore, while the Zoning Code requires a minimum 20-foot front yard setback and 10 foot side yard setback, in this particular case, the encroachment is so 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 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.

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