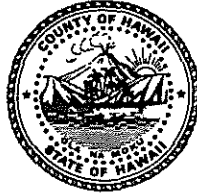


Stephen K. Yamashiro
Mayor



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 364 320 392

October 20, 1995

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

Dear Mr. McIntosh:

Variance Application (VAR 705)
Applicant: Byron and Marjorie Cochrane
Variance From Minimum Side Yard Setback Requirements of
Zoning Code
Tax Map Key: 7-8-4:27

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-story single family dwelling with a side yard setback of 13.1 feet and a detached water tank with a side yard setback of 10.8 feet in lieu of the required 20 foot side yard setback of the Zoning Code.

The subject property is located approximately 3/4 mile mauka (east) of Mamalahoa Highway on Bishop Road, Keauhou, N. Kona, Hawaii, Tax Map Key: 7-8-04:27.

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 Bishop Road Subdivision consisting of 7.3 acres of land area.

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2. The subject single family dwelling was issued Building Permit No. 07662 in 1986.
3. A survey map dated August 31, 1995, prepared and certified by Donald C. McIntosh shows the existing dwelling with a side yard setback of 13.1 feet and 10.8 feet. As such, the subject dwelling encroaches into the side yard setback at the side of the dwelling by 6.9 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 1986.
6. It appears that a construction staking error occurred in 1986 when the dwelling was constructed in the siting of the structure on the property. It also appears that a siting error was done at the time of construction resulting in the encroachment. No other evidence has been found to show otherwise.
7. It has been over 9 years since the construction of the existing dwelling which 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 the facts.

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 rectangular in shape with a front yard, rear yard and two side yard setbacks as required by the Zoning Code.

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2. The present encroachments of 6.9 and 9.2 feet at the side of the subject dwelling is minor in relationship to the minimum required 20 foot side yard setback. In this particular circumstance, this minor encroachment is not perceptibly visible that it could be readily detected or seen as encroaching into the side 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 13.1 feet and the water tank 10.8 feet from the side property line. Therefore, although only 13.1 and 10.8 foot side yard setbacks are being provided against the side property line, the 6.9 and 9.2 feet encroachment is not visually perceptible that it will not diminish the ability for adequate light, air and open space between the existing dwelling and the side property line.

Therefore, while the Zoning Code requires a minimum 20-foot rear yard setback, in this particular case, the encroachment is so miniscule 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