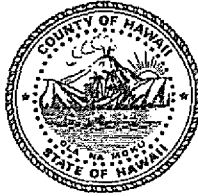


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

CERTIFIED MAIL

P 7099 3220 0000 4868 7993

July 14, 2000

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

Ms. Blossom Coffman
P. O. Box 297
Kailua-Kona, Hawaii 96745

Dear Ms Coffman:

Application to Amend Variance No. 706
INF 01-0013
Applicant: BLOSSOM COFFMAN
Owner: VTS OPERATING FUND, INC.
Request: Delete Condition No. 5 of Variance No. 706
Tax Map Key: 7-5-021:038

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to delete Condition No. 5 of Variance No. 706.

The subject property is located on the makai (west) side of Alii Drive in the vicinity of the Kona Shore Condominium, Kahului 2nd, North Kona, Hawaii, Tax Map Key: 7-5-021:038.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 4,947 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. In 1935 a single family dwelling was constructed on the property.
 - b. On August 23, 1963 a Building Permit was issued for a 30 feet by 24 feet addition to the existing single family dwelling.
 - c. On November 17, 1995, Variance No. 706 was approved by the Planning Director to allow the existing single family dwelling with a rear yard setback of 5.3 feet in lieu of the minimum 20 feet rear yard as required by Chapter 25, Article 10, Section 25-172(a)(2).

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Ms. Blossom Coffman

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- d. Building Permit No. 960051 was opened on January 11, 1996 for the construction of new stairs, decorative siding, termite dryrot repair of living room/tile bathroom; enclose eaves mauka & makai side of house; remodel kitchen; add bathroom; move heater; re-roof; and remove stairs.
3. Variance No. 706 was conditioned upon the following:
 - "5. As agreed upon with the Planning Director, the applicant shall perform the interior renovations and execute a single family dwelling agreement for recordation with the deed document."
4. The applicant is proposing to utilize the single family dwelling as a check-in office and temporary hospitality while visitors are waiting for room availability at the adjacent Sea Village Condominium Time Share units.
5. Section 25-5-92(a)(35) (Permitted Uses) states: "The following uses are permitted in the V (Resort-Hotel) district:
"(35) - Time share units.
6. Section 25-5-92(c) states: "Buildings and uses normally considered directly accessory to the uses permitted in this section shall also be permitted in the V (Resort-Hotel) district."
7. The applicants request to utilize the structure as a check-in office is directly accessory to the Time Share use which is permitted within the V (Resort-Hotel) zoned district.
8. It has been over 65 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which they had no control over and have disclosed of all facts concerning the dwelling and improvements.
9. The variance application was filed with the Planning Department on May 4, 2000.

COUNTY AND STATE PLANS

10. SLUC: Urban.
11. GP LUPAG map: The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Resort. These areas include uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), and supporting services.

Ms. Blossom Coffman

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12. COUNTY Zone: V-1.25.

There were two letters received from surrounding property owners.

- 1) Mr. A. John Gallant, letter dated May 28, 2000 in support of the application.
(See exhibit A)
- 2) Mr. & Mrs. Lowell Hein, letter dated July 2, 2000 in objection of the application.
(See exhibit B)

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives 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 owners on their own volition are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.
2. Condition No. 5 of Variance No. 706 was drafted with the intention that the structure would remain as a single family dwelling. The single family dwelling is located within the Resort-Hotel district. Condition No. 5 would create undue and excessive hardships for the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable solutions available without excessive demands being placed on the owners when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring conditions of approval in the processing of Variances is to ensure that adequate air and light circulation is available between structures and property lines and to enforce compliance with the necessary requirements of the Zoning Code.

Based on the foregoing findings, this amendment to the variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, this variance will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the areas' character and to adjoining properties.

Ms. Blossom Coffman
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This variance is amended, subject to the following: (additions are underlined and deletions bracketed)

1. The applicant, his 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 deed document for the subject property and a copy of the recorded deed document shall be submitted to the Planning Department within one (1) year from the effective date of approval of this [variance] amendment.
3. All demolished structural material shall be removed from adjacent properties within thirty (30) days of the effective date of the approval of this variance.
4. A rear yard landscape buffer plan shall be submitted to the Planning Director within sixty (60) days of the effective date of this variance for review and approval.
- [5. As agreed upon with the Planning Director, the applicant shall perform the interior renovations and execute a single family dwelling agreement for recordation with the deed document.]
5. The applicant shall finalize Building Permit No. 960051 and comply with the requirements of the Department of Public Works, Building Division.
6. Comply with all other applicable State and County rules and regulations.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance null and void.

Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

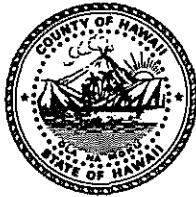
Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
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Enclosure
xc: West Hawaii Office

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 364 320 395

November 17, 1995

Mr. Donald W. Simpson
P. O. Box 5244
Kailua-Kona, HI 96745

Dear Mr. Simpson:

Variance Permit (VAR 706)
Applicant: Donald W. Simpson
Variance From Minimum Rear Yard Setback and Open Space
Requirements of the Zoning Code
Tax Map Key: 7-5-21:38

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow the existing single family dwelling with a rear yard setback of 5.3 feet in lieu of the minimum 20 feet as required by Chapter 25, Article 10, Section 25-172(a)(2).

The subject property is located on the makai (west) side of Alii Drive in the vicinity of the Kona Shores Condominium, Kahului 2nd, North Kona, Hawaii, Tax Map Key: 7-5-21:38.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to Real Property Tax Office records the existing structure was constructed in 1935 as a single family dwelling. On August 23, 1963 a building permit was issued for a 30 foot by 24 foot addition to the structure. As such, the original structure as well as the addition in 1963 are considered "non-conforming" in terms of the existing Zoning Code (1967) totaling a maximum building size of 2,200 square feet.

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Mr. Donald W. Simpson
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The intent and purpose of requiring building setbacks is to assure that adequate air, light, and open space are available between structures and property lines. The subject property, consisting of 4,947 square feet, is also non-conforming in terms of the existing Zoning Code minimum 15,000 square feet lot size requirement. The property is only 28.7 feet wide on the north side and 38.8 feet wide on the south side. The existing non-conforming structure is situated approximately four (4) feet from the front property line and 5.3 feet at its closest point from the rear property line.

The applicant purchased the subject property in 1986 without doing the necessary background check inasmuch as additional improvements were made to the structure without the required building permits. In addition, the applicant also performed interior and exterior renovations and additions to the structure without the necessary building permits. However, the applicant is now working with the Planning Department and Building Division in an attempt to remove all the illegal decks, stairways, ramps, etc., to conform to the original floor area of 2,200 square feet which may not be economically or structurally possible. Additionally, the applicant has agreed to perform interior renovations and execute a single family dwelling agreement for recordation with the deed document. Thus, as part of the working arrangements a rear yard setback variance of 5.3 feet to retain that portion of the structure was submitted for review and appropriate action.

A survey map dated March 1991, prepared and certified by Wes Thomas Associates shows, after removal of decks, stairs and ramps, the existing structure with a rear yard setback of 5.3 feet. As such, the subject structure encroaches into the rear yard setback by 14.7 feet.

It has been over 60 years since the construction of the existing structure. While the applicant has contributed to some of the construction improvements to the structure without the necessary government approvals, he is trying to resolve a situation which he had no total control over and he honestly conducted a certified survey to ensure the disclosure of all facts concerning the structure including the removal of existing exterior building improvements which were done without any building permits.

Mr. Donald W. Simpson
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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

The subject property, consisting of 4,947 square feet, contains an existing "non-conforming" structure in terms of today's Zoning Code requirements related to setbacks.

The applicant has already removed some of the structural improvements which were done without the necessary permits as a means of trying to resolve the situation.

To have the applicant do any additional exterior architectural alterations or design changes to the structure to conform with the minimum setbacks would create undue and excessive hardships on 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.

CONCLUSION

In this particular case, the ability for adequate air, light and open space has already, to some extent, been diminished in most part by the existing non-conforming portion of the structure.

There were no objections from any of the participating government agencies. There were two (2) objections from adjacent 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 welfare.

Mr. Donald W. Simpson
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This variance request is approved subject to the following conditions:

1. The applicant, his assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The approval of the variance shall be included in the deed document for the subject property and a copy of the recorded deed document shall be submitted to the Planning Department within one (1) year from the effective date of approval of this variance.
3. All demolished structural material shall be removed from adjacent properties within thirty (30) days of the effective date of approval of this variance.
4. A rear yard landscape buffer plan shall be submitted to the Planning Director within sixty (60) days of the effective date of this variance for review and approval.
5. As agreed upon with the Planning Director, the applicant shall perform the interior renovations and execute a single family dwelling agreement for recordation with the deed document.
6. Comply with all other applicable State and County rules and regulations.

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: Mr. Bill Davis, Managing Director
West Hawaii Office
Building Division, Kona
Real Property Tax Office (Hilo and Kona)
State Department of Health