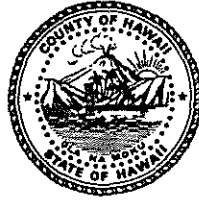


Stephen K. Yamashiro
Mayor



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

June 10, 1996

Mr. Steven S.C. Lim
Carlsmith Ball Wichman Case & Ichiki
P.O. Box 686
Hilo, Hawaii 96721-0686

Dear Mr. Lim:

Variance Application WH(VAR 96-25)
Variance No. 751
Applicant: LARRY AND VERONICA CLEMENS
Variance from Minimum FRONT YARD AND OPEN SPACE Requirements
Tax Map Key: 7-8-014:051

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling with a 14.4 feet front yard and a 9.9 feet open space in lieu of the minimum 15 foot front yard and 10 foot open space as required by Chapter 25, Article 4, Section 25-124(a)(1) and Article 1, Division 10, Section 25-66(a)(1).

The subject property is located on the makai side of Alii Drive, in Kahaluu, North Kona, Hawaii, TMK: 7-8-014:51.

The Planning Director has concluded that the variance request from the minimum front yard and open space requirements should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The present homeowners purchased the property on February 18, 1994 with no disclosure from the sellers encroachments into the required setbacks.
2. There appears to be a discrepancy with the Department of Public Works, Building Division, Real Property Tax records and the actual size of the dwelling.

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3. In 1968 the Single Family Dwelling consisted of 960 square feet in living area and 440 square feet of lanai. At the present time the dwelling consists of 2,948 square feet of living area and 1,568 square feet of other covered area.
4. It appears that not all of the necessary Department of Public Works, Building Division approvals for dwelling were issued.
5. It has been over 28 years since the construction of the existing dwelling and the applicant is trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
6. The variance application was acknowledged as received by the Planning Department on February 21, 1996.
7. A survey map prepared by Wes Thomas Associates on February 28, 1995, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 14.4 feet front yard. The subject dwelling encroaches into the front yard by 7 and 1/4 inch.
8. In addition the survey map indicates the existing two story single family dwelling with 9.9 open space. The subject dwelling encroaches into the open space by 1 and 1/4 inch.

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 applicant on their own volition is honestly trying to resolve this long standing problem which was not created by them.
2. The applicant have agreed to remove portions of the residence which encroach into the required side yard at the north end, and to delete a stairway and portions of a bath/shower area consisting of approximately 288 square feet. After the deletion the

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dwelling will contain approximately 2,948 square feet of living area and 1,280 feet of other covered area.

3. Any other architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.
4. While there are other alternatives available the more practical solution is the granting of the variance.

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 buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines.

The existing two story single family dwelling with 14.4 front yard encroaches by 7 and 1/4 inch. In addition the existing two story single family dwelling encroaches into the open space by 1 and 1/4 inch.

These encroachments into the front yard and open space are minor and not visually perceptible that it will diminish the ability for adequate light, air and open space. Therefore, while the Zoning Code requires a minimum 15 feet front yard and 10 feet open space, in this particular case, the encroachments are minor that 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 requirements of the Zoning Code.

There were no objections from any of the participating government agencies or any 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 Code 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 areas character and to adjoining properties.

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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 a year from the effective date of approval of this variance.
3. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
4. Remove all encroachments into the north side of the parcel.
5. 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

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xc: West Hawaii Office