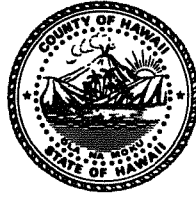


Stephen K. Yamashiro
Mayor



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

February 2, 1996

Ms. Patricia S. Halpern
162 Kinoole Street, #201
Hilo, HI 96720

Dear Ms. Halpern:

Variance Permit (VAR 724)
Applicant: Bess Jennings
Request: Variance from Minimum Front Yard Setback and
Clearspace Requirements of Zoning Code, Chapter 25,
Section 25-124 (a) (2) (A) and Section 25-66
Tax Map Key: 9-5-09:48, Lot 4

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 front yard setback of 16.16 and 16.25 feet to wall line and 12.2 feet for open projection (stairway) in lieu of the required 20 feet for oval line and 14 feet for open projection of the Zoning Code, Chapter 25, Section 25-124 (a) (2) (A) and Section 25-66.

The subject property is located on the corner of Niu Street and Poha Street in Naalehu Village, Kaunamano, Kau, Hawaii Tax Map Key: 9-5-09:48, Lot 4.

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

Special and Unusual Circumstances

1. The subject property consisting of 15,011 square feet of land area is located in Naalehu Village.
2. The subject single family dwelling was issued Building Permit No. 800804 in 1980.

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Ms. Patricia S. Halpern
Page 2
February 2, 1996

3. A survey map dated July 22, 1985, prepared and certified by Donald C. McIntosh, shows the existing dwelling with a front yard setback of 16.16 feet and 16.25 feet. As such, the subject dwelling encroaches into the front yard setback at the front of the dwelling by 3 plus 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 1980.
6. It appears that a minor construction staking error occurred in 1980, 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 16 years since the construction of the existing dwelling, which was approved by the County, and the applicant 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(s) 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 corner lot with two (2) front yard and two (2) side yard setbacks as required by the zoning code.
2. The present encroachment of approximately three (3) feet at the front of the dwelling is minor in relationship to the minimum required twenty (20) foot front 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 front yard 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 setback 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 16.16 feet and 16.25 feet from the front property line. Therefore, although only 16.16 and 16.25 foot front yard setbacks are being provided against the front property line, the 3 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 property line.

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

Ms. Patricia S. Halpern

Page 4

February 2, 1996

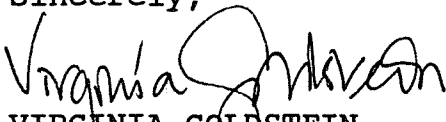
public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

1. The applicant, her 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

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