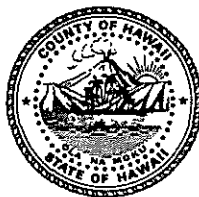


Stephen K. Yamashiro  
Mayor



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

Z 095 324 155

May 19, 1997

Mrs. Andrea L. Kennedy  
P. O. Box 765  
Hilo, HI 96721

Dear Mrs. Kennedy:

Variance Permit No. 829 (VAR 97-16)  
Applicant: WILLIAM H. NORDSTROM, JR.  
Request: Variance From the Minimum Yards and Permitted Projections  
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning  
Tax Map Key: 2-4-022:062, Lot 27

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 829 allows the existing dwelling situated on the subject property to have one side yard being minimum nine (9.0) feet in lieu of the minimum ten (10) foot side yard and rear yard being nineteen (19.0) feet in lieu of the minimum twenty (20) foot rear yard required for the subject property zoned Single-Family Residential (RS-10), pursuant to Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (A), and (B).

The subject property is Lot 27, being a Portion of Komohana Gardens Subdivision, Unit I, F.P. 1153, situated at Waiakea Homesteads, Second Series, Waiakea, South Hilo, Island and County of Hawaii. The property and existing building improvements thereon are more commonly identified by the tax map key parcel number, Tax Map Key: 2-4-022:062, Lot 27.

#### FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 10,022 square foot parcel is zoned Single-Family Residential (RS-15) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).
2. The existing dwelling and related site improvements were built and constructed under two (2) building permits (B Nos. 822184 and 830594) issued by the Hawaii County Department of Public Works (DPW), Building Division. The foregoing building permits were closed by the DPW, Building Division on April 8, 1983, and July 10, 1989, respectively.
3. The survey map, drawn to scale and dated February 13, 1997, by Robert S. Bright, RLS, identifies the location of the dwelling on the subject property. The existing dwelling exhibits the following range of side yard dimensions; "9.5" feet and "10.0" feet between the face of the building walls and the respective side property line(s) and "19.3" feet between the face of the wall to the rear property line. The site plan also identifies the location of the existing "roof overhang".
4.
  - a. Building Permit B No. 822184 was issued to Mr. and Mrs. Tom Lai by the Department of Public Works (DPW), Building Division, on December 20, 1982, to construct a new dwelling together with other necessary site and related building improvements. Subsequent to the issuance of the original building permit to construct the new single story dwelling, a second building permit B No. 830594 for a roof addition over an existing walkway was requested and issued to Mr. and Mrs. Tom Lai on April 20, 1983. In addition to the building permits, it appears any necessary electrical and plumbing permits associated with the building permits were also obtained from the DPW, Building Division.
  - b. The building permits, B No. 822184 and 830594 were respectively closed by the DPW, Building Division on April 8, 1983, and July 10, 1989.
5. It appears the original site plan and building construction plans submitted with the building permit application were reviewed and approved by the Planning Department on April 8, 1983. However, it appears copies of the approved site plan and building construction plans approved by the County in 1983 were not available or included with the subject variance application.

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6. The applicant's statements included with the subject variance application imply the approved building and existing building encroachments within the effected side yard went undetected by the County, other government agencies, and the public.

The owner(s)/applicant(s) recently discovered and identified the existing building encroachments within the effected side and rear yard. The applicants became aware of the building encroachments during a pending real estate transaction and after a modern survey by a Registered Land Surveyor was prepared.

Therefore, considering the foregoing facts and existing site improvements, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner(s)/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

There are no reasonable alternatives in resolving the difficulty of the owner(s)/applicant(s). Alternatives available to the applicant include the following:

Removing the existing building encroachments together with the effected roof eaves resulting in a smaller living space; acquiring additional property from the adjacent property or relocate the dwelling or construct a new dwelling within the correct building envelope prescribed by the Zoning Code, on the lot and other similar design alternatives, etc. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing dwelling would be economically unreasonable and possibly disrupt the dwelling's building integrity, existing interior room circulation, and disrupt other existing site improvements.

The current owner(s) or applicant(s), on their own volition, are honestly trying to resolve fourteen (14) year old building encroachment problems. No evidence has been found to show indifference or premeditation by the previous owners or builder in 1983 to deliberately or intentionally allow the building encroachments to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owners/applicants recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners when a more reasonable alternative is available by the granting of the subject variance request.

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### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The existing dwelling and related building improvements were constructed under a valid building permit issued to the previous owner(s). Building inspections of the premises and building construction during the life of the building permit did not disclose any setback irregularities. The builder and previous owners felt all Zoning Code, building permit requirements and government procedures were observed and all County building requirements were satisfied or met.

The building encroachments have been built within one of the property's side yard and within the rear yard. The fourteen (14) year old building encroachments into the respective side yard and rear yard are not physically and visually obtrusive. The existing fourteen (14) year old single story dwelling's design and related site improvements are similar to other dwellings within the subdivision. The building encroachments do not depreciate or detract from the character of the surrounding neighborhood, residences, public uses, and the existing and surrounding urban land patterns. It appears, the existing building encroachments established over fourteen (14) years ago within the effected side and rear yard have not visually, physically or adversely affected the rights of the property owners of the adjacent parcels. Therefore, it is felt the present location and existing building encroachments will not detract from the character of the immediate neighborhood within the subdivision. It appears the existing building encroachments were induced by a foundation error or a misunderstanding or misinterpretation of the minimum building yards or "building setbacks" by the past owner and/or builder. The bulk or remaining portion of the "living area" within the existing dwelling complies with the minimum yards of the Zoning Code. To date, no objections were received from the surrounding property owners, and affected public agencies.

The subject variance application was deemed complete on February 18, 1997, and pursuant to a telephone conversation with the applicant, Mrs. Kennedy, an extension of time until May 20, 1997, to render a decision on the subject variance application was mutually agreed upon.

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.

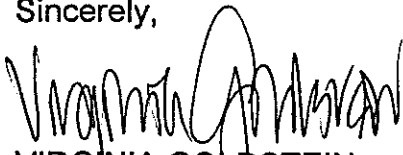
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This variance request is approved subject to the following conditions:

1. The applicant(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners have identified and acknowledged the subject building encroachments and residential use were built and established within one of the side and rear yards of the subject property. A portion of the existing dwelling does not comply with the minimum side yard requirements prescribed by the Chapter 25, Zoning dated December 7, 1996. The applicants/owners, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code minimum side and rear yard requirements.
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

WRY:mim

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xc: Real Property Tax Office