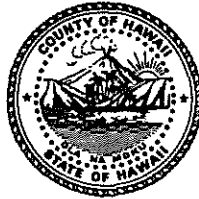


Stephen K. Yamashiro  
Mayor



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 293 080 455

May 15, 1997

Mr. Robert D. Triantos  
Carlsmith Ball Wichman Case & Ichiki  
P.O. Box 1720  
Kailua-Kona, Hawaii 96745-1720

Dear Mr. Triantos:

Variance Application WH(VAR 97-24)

Variance No. 826

Applicant: JOHN REES, MARA HISIGER, THOMAS L. ROWE and MARY  
JENNIFER ROWE

Variance from Minimum Front Yard and Open Space Requirements

Tax Map Key: 8-3-010: 028

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow to allow an EXISTING TWO STORY SINGLE FAMILY DWELLING with a 23.50 feet front yard in lieu of the minimum 30 feet front yard; an EXISTING STORAGE with a 10.30 to 19.70 feet front yard in lieu of the minimum 30 feet front yard; EXISTING OPEN CARPORT with a 10.20 to 10.30 feet open space in lieu of the minimum 24 feet open space, as required by Chapter 25, Article 5, Division 7, Section 25-5-76(a) and Division 4, Section 25-4-44(a)(1).

The subject property is located at Keei 2nd, Lot 1-A, Being a Portion of L.C. As. 5524, Ap. 5 to L. Konia, South Kona, Hawaii, Tax Map Key: 8-3-010: 028.

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.00 acre of land area.

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2. The subject single family dwelling was issued the following:
  - a. Building Permit No. 403 opened on May 5, 1973 for a single family dwelling.
  - b. Building Permit No. 7343 opened on March 4, 1986 and closed on June 25, 1986 for an addition to the single family dwelling.
3. A survey map prepared by Wes Thomas Associates on December 13, 1996, shows the **EXISTING TWO STORY SINGLE FAMILY DWELLING** with 23.50 feet front yard in lieu of the required 30 feet front yard. As such, the subject dwelling encroaches by 6 feet 6 inches into the required 30 feet front yard.
4. The survey map indicates the **EXISTING STORAGE** with a 10.30 to 19.70 feet front yard in lieu of the minimum 30 feet front yard. As such, storage encroaches by 10 feet 3 and 5/8 inches to 19 feet 8 and 3/8 inches.
5. In addition, indicates the **EXISTING OPEN CARPORT** with a 10.20 to 10.30 feet open space, in lieu of the minimum 24 feet open space. As such the open carport encroaches 13 feet 8 and 3/8 inches to 13 feet 9 and 5/8 inches into the required 24 feet open space.
6. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling.
7. 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 adhere to for the proposed dwelling, storage shed and open carport in 1973.
8. There appears to have been a construction error occurred in 1973 when the dwelling, storage shed and open carport were constructed on the property. No other evidence has been found to show otherwise.
9. It has been over 24 years since the construction of the existing dwelling, storage shed and open carport which was approved by the County and the applicant is trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling, storage shed and open carport.
10. The variance application was filed with the Planning Department on April 7, 1997.

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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 are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
2. Any 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.

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 dwelling on the subject property is presently encroaches 6 feet 6 inches into the required 30 feet front yard. The existing storage encroaches by 10 feet 3 and 5/8 inches to 19 feet 8 and 3/8 inches. In addition, the open carport encroaches 13 feet 8 and 3/8 inches to 13 feet 9 and 5/8 inches into the required 24 feet open space. This encroachments into the front yard and open space are minor but are not visually perceptible that it will diminish the ability for adequate light, air and open space. The dwelling was constructed by the previous owners with the assumption that the front property line existed in the area where the water meter and driveway begins, thus creating the present encroachments. The property fronts Middle Keei road and mauka or east of the road right-of-way. Relocating the residence is impractical.

Therefore, while the Zoning Code requires a minimum 30 feet front yard and 24 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, storage shed and open carport complies with the minimum yard requirements of the Zoning Code.

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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.

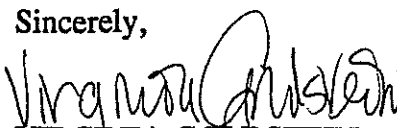
This variance request is approved, subject to the following conditions:

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. 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.

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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xc: West Hawaii Office