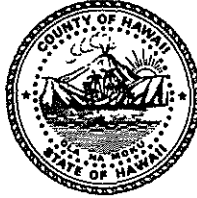


Stephen K. Yamashiro  
Mayor



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 620 315 192

March 20, 1997

Mr. Dennis Reid  
P.O. Box 2653  
Kailua-Kona, Hawaii 96745

Dear Mr. Reid:

Variance Application WH(VAR 97-8)  
Variance No. 814  
Applicant: GLYNN LEE  
Variance from Minimum Front and Side Yard Requirements  
Tax Map Key: 7-3-033: 056

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 and garage with a 19.7 feet front yard in lieu of the minimum 20 feet front yard, and a side yard of 9.7 to 9.8 feet in lieu of the minimum 11 feet side yard as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A) and Section 25-5-7(a)(2)(B).

The subject property is located in Kona Palisade Subdivision, Lot 56 of , Unit 2, at Kalaoa 5th, North Kona, Tax Map Key: 7-3-033: 056

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 subject property consists of 10,576 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 896529 opened on October 30, 1989 and closed on May 16, 1990 for a single family dwelling and garage.

03010

APR 02 1997

- b. Building Permit No. 905446 opened on March 19, 1990 for an addition to the single family dwelling and closed on May 16, 1990.
  - c. Building Permit No. 925229 opened on February 11, 1992 for an addition to the single family dwelling and closed on April 22, 1992.
  - d. Building Permit No. 945092 opened on February 2, 1994 for a hot tub and remains open.
3. A survey map prepared by Kevin McMillen on January 27, 1997, shows the **EXISTING TWO STORY SINGLE FAMILY DWELLING AND GARAGE** with 19.7 feet front yard, in lieu of the required 20 feet front yard. As such, the subject garage encroaches 3 and 5/8 inches into the required 20 feet front yard.
  4. Additionally, the survey indicates a side yard of 9.7 to 9.8 feet in lieu of the required 11 feet side yard. As such, the subject dwelling encroaches into the side yard by 1 foot 2 and 3/8 inches to 1 foot 3 and 5/8 inches.
  5. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling and garage.
  6. 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 and garage in 1989.
  7. There appears to have been a construction staking error occurred in 1989 when the dwelling and garage were constructed in the siting of the structure on the property. There also appears that a very minor siting error was done at the time of construction with the encroachments. No other evidence has been found to show otherwise.
  8. It has been over 8 years since the construction of the existing dwelling and garage 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 and garage.
  9. The variance application was filed with the Planning Department on February 12, 1997.

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

Mr. Dennis Reid  
Page 3  
March 20, 1997

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 his own volition is honestly trying to resolve this long standing problem which was not created by him. 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.
3. 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 and garage has a 19.7 feet front yard, in lieu of the required 20 feet front yard. As such, the subject garage encroaches 3 and 5/8 inches into the required 20 feet front yard. The survey also indicates a side yard of 9.7 to 9.8 feet in lieu of the required 11 feet side yard. As such, the subject dwelling encroaches into the side yard by 1 foot 2 and 3/8 inches to 1 foot 3 and 5/8 inches. These encroachments into the front and side yard are minor but are not visually perceptible that it will diminish the ability for adequate light, air and open space.

Therefore, while the Zoning Code requires a minimum 20 feet front yard and 11 feet side yard 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 and garage complies with the minimum yard requirements of the Zoning Code.

Mr. Dennis Reid  
Page 4  
March 20, 1997

There were no objections from 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. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
4. Any encroachments within the County right-of-way shall be removed or permitted as required by Department of Public Works Engineering.
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

RHY:rld  
a:\73033056\lee.ltr

xc: West Hawaii Office