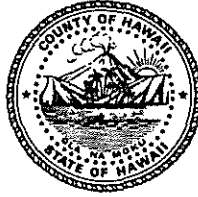


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Russell Kokubu  
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 293 080 417

September 1, 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 97-48)  
Variance No. 848  
Applicant: ROBERT D. TRIANTOS  
Owner: JAMES F. GREGORY, Trustee of the Gregory Family Trust  
Variance from Minimum FRONT YARD, SIDE YARD and OPEN SPACE  
Requirements  
Tax Map Key: 7-8-014: 052

After reviewing your application and the submittal, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling with a .58 feet front yard open space in lieu of the minimum 10 feet front yard open space; 4.34 to 5.66 feet side yard in lieu of the minimum 10 feet side yard; 0.00 to 2.00 side yard open space in lieu of the minimum 5 feet side yard open space, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A)(B), and Division 4 Section 25-4-44(a).

The subject property is located in the North Kahaluu Beach Subdivision, Lot 4-A, at Kahaluu, North Kona, Hawaii, Tax Map Key: 7-8-014: 052.

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 12,196 square feet of land area.

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2. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. 13157 opened on January 2, 1953 for the construction of a 2-bedroom, single family dwelling.
  - b. Building Permit No. 14095 opened on August 21, 1953 to construct a 798 square feet addition to the existing dwelling.
  - c. Building Permit No. 31774 opened on September 10, 1965 to repair and repaint the existing dwelling.
  - d. Building Permit No. 40880 opened on February 29, 1969 for repair of the existing dwelling and to construct a 144 square feet lanai.
  - e. Building Permit No. 858 opened on May 30, 1974 for the construction of a 280 square feet carport.
  - f. Building Permit No. 975132 opened on February 18, 1997 and closed on May 20, 1997 for the construction of a swimming pool.
3. A survey map prepared by Don McIntosh Consulting on December 23, 1996, shows the existing two story single family dwelling with .58 feet front yard open space in lieu of the minimum 10 feet front yard open space. As such, the dwelling encroaches by 9 feet 5 inches into the required 10 feet front yard open space.
4. The survey map shows the existing two story single family dwelling with a 4.34 to 5.66 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling encroaches 4 feet 4-1/8 inches to 5 feet 7-7/8 inches in the required 10 feet side yard.
5. In addition the survey map shows the existing two story single family dwelling with a 0.00 to 2.00 side yard open space in lieu of the minimum 5 feet side yard open space. As such, the dwelling encroaches 3 feet to 5 feet into the required 5 feet open space.
6. The homeowner at that time the building permits were approved, received all of the necessary Department of Public Works, Building Division approvals for dwelling, swimming pool, and portions of the carport and lanai.

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 adhered to for the proposed dwelling in 1953.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1953 when the dwelling was constructed. There also appears to have been very minor siting error with the encroachment at the time of construction. No other evidence has been found to show otherwise.
9. It has been over 44 years since the construction of the existing dwelling which was approved by the County and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure disclosure of all facts concerning the dwelling.
10. The variance application was filed with the Planning Department on July 2, 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 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 the applicant. 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.

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#### 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 into the front yard open space 9 feet 5 inches into the required 10 feet open space; 4 feet 4-1/8 inches to 5 feet 7-7/8 inches in the required 10 feet side yard; and 3 feet to 5 feet into the required 5 feet open space. These encroachments into the front yard, side yard and open space will not diminish the ability for adequate light and air to circulate and to provide for adequate open space. Therefore, while the Zoning Code requires a minimum 10 feet front yard open space, 10 feet side yard and 5 feet side yard open space in this particular case, the encroachments are relatively 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 and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore this variance 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 unpermitted alterations to the single family dwelling shall be removed or permitted by the Department of Public Works Building Division.

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4. Any encroachments within the State or County right-of-way shall be removed as required by Department of Public Works Engineering.
5. If applicable, approval from the Board of Appeals for all Housing and Building Code Violations will be obtained.
6. 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

EMM: rld  
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xc: West Hawaii Office