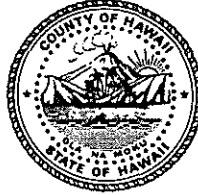


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
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 293 080 435

September 23, 1997

Mr. Mark Van Pernis  
Van Pernis, Smith & Vancil  
P.O. Box 1837  
Kailua-Kona, Hawaii 96745

Dear Mr. Van Pernis

Variance Application WH(VAR97-55)  
Variance No. 858  
Applicant: MARK VAN PERNIS  
Owners: FRED B. SIMS & ELENA SIMS  
Variance from Minimum Open Space Requirements  
Tax Map Key: 7-8-019: 024

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 carport with a 4.35 feet open space in lieu of the minimum 5 feet open space, as required by Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located in the Puuloa 1 Subdivision, Lot 27, Portion of Keauhou, North Kona, Hawaii, Tax Map Key: 7-8-019: 024.

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 23,141 square feet of land area.
2. The subject single family dwelling and carport was issued a building permit in 1967.

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3. A survey map prepared by Don McIntosh Consulting on June 25, 1997, shows the existing two story single family dwelling and carport with a 4.35 feet open space in lieu of the minimum 5 feet open space. As such, the dwelling and carport encroaches 7 and 7/8 inches into the required 5 feet open space.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for 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 and carport in 1967.
6. There appears to have been a construction staking error occurred in 1967 when the dwelling and carport 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.
7. It has been over 30 years since the construction of the existing dwelling and carport which was approved by the County and the applicants are trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and carport.
8. The variance application was filed with the Planning Department on July 30, 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 applicants 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 applicants on their own volition are honestly trying to resolve this long standing problem which was not created by the applicants. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.

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2. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicants 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 applicants 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 and carport on the subject property is presently 7 and 7/8 inches into the required 5 feet open space. This encroachment into the 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 5 feet open space, in this particular case, the encroachment is 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 and carport 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 intent and purpose 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.


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3. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
4. 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,

  
for VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
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xc: West Hawaii Office