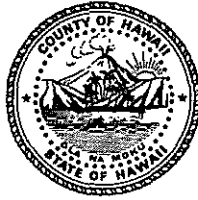


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokub  
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 417 379 046

October 21, 1997

Mr. Don McIntosh  
P.O. Box 58  
Kailua-Kona, Hawaii 96745-0058

Dear Mr. McIntosh:

Variance Application WH(VAR 97-60)  
Variance No. 865  
Applicant: DON MCINTOSH CONSULTING  
Owner: CLAYTON SHIRAKI AND ETAL.  
Variance from Minimum SIDE YARD Requirements  
Tax Map Key: 7-7-020: 036

After reviewing your application and the submittal, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling with a 8.41 feet side yard in lieu of the minimum 10 feet side yard; and DETACHED GARAGE with a 8.85 side yard in lieu of the minimum 10 feet side yard as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B).

The subject property is located in the Kalani Sunset Subdivision, Lot 36, at Holualoa 3rd, North Kona, Hawaii, Tax Map Key: 7-7-020: 036.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,001 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. 896196 opened on August 31, 1989 and closed on July 10, 1990 for the construction of a single family dwelling and detached garage.

10572

OCT 29 1997

Mr. Don McIntosh  
Page 2  
October 21, 1997

3. A survey map prepared by Don McIntosh Consulting on September 22, 1996, shows the existing one story single family dwelling with 8.41 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling encroaches by 1 foot 7-1/8 inches into the required 10 feet side yard.
4. The survey map shows the existing detached garage with a 8.85 feet side yard in lieu of the minimum 10 feet side yard. As such, the detached garage encroaches 1 foot 1- 7/8 inches in the required 10 feet side yard.
5. The homeowner at that time the building permits were approved, received all of the necessary Department of Public Works, Building Division approvals for dwelling and detached 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 adhered to for the proposed dwelling and detached garage in 1989.
7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1989 when the dwelling and detached garage were constructed. 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 detached garage which were 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 detached garage.
9. The variance application was filed with the Planning Department on August 25, 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 applicants on their own volition are honestly trying to resolve this long standing problem which was not created by the applicant. The investigation of this particular

Mr. Don McIntosh

Page 3

October 21, 1997

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 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 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 into the side yard by 1 foot 7-1/8 inches into the required 10 feet side yard. The detached garage is presently 1 foot 1- 7/8 inches into the required 10 feet side yard. These encroachments into the side yard will not diminish the ability for adequate light and air to circulate and to provide adequate open space. Therefore, while the Zoning Code requires a minimum 10 feet side yard in this particular case, the encroachments are relatively minor and 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 detached garage 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.

Mr. Don McIntosh

Page 4

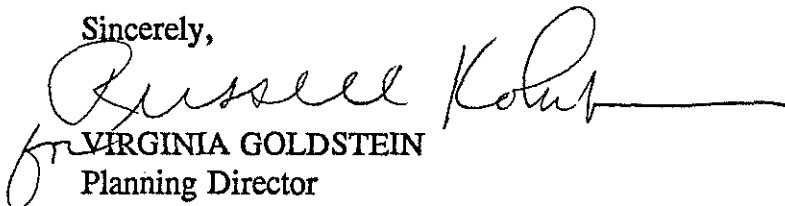
October 21, 1997

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. If applicable, approval from the Board of Appeals for all Housing and Building Code Violations will be obtained.
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,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

a:\77020036\shiraki.app

xc: West Hawaii Office