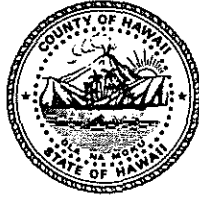


Stephen K. Yamashiro  
Mayor



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 417 379 047**

November 10, 1997

Mr. Keith Reed  
P.O. Box 225  
Holualoa, Hawaii 96725

Dear Mr. Reed:

Variance Application WH(VAR 97-62)  
Variance No. 867  
Applicant: KEITH G. REED  
Owner: STEVEN H. CHEN, KEITH G. REED & NELLIE M. REED  
Variance from Minimum SIDE YARD Requirements  
Tax Map Key: 7-5-014: 028

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 and lanai with a 10.00 to 14.16 feet side yard in lieu of the minimum 15 feet side yard; a greenhouse with a 9.70 to 14.70 feet side yard in lieu of the minimum 15 feet side yard, as required by Chapter 25, Article 5, Division 5, Section 25-5-56(2).

The subject property is located in the Land Commission Award 10267 Apana 2 to Malowaole, at Puaa 2nd, North Kona, Hawaii, Tax Map Key: 7-5-014: 028.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property consists of 17,011 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. 006066 opened on October 18, 1983 and closed on May 25, 1984 for the conversion of an existing storage shed into a single family dwelling, garage and carport.

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- b. Building Permit No. 006129 opened on December 7, 1983 and closed on May 22, 1984 for alterations to building permit number 006066.
  - c. Building Permit No. 006246 opened on March 23, 1984 and closed on May 22, 1984 for or alterations to building permit number 006066 to add a kitchen to recreation room.
  - d. Building Permit No. 916463 opened on October 31, 1991 and closed on August 27, 1992 to eliminate the bathroom in the basement, rough in only.
  - e. Building Permit No. 916464 opened on October 31, 1991 and closed on May 21, 1992 for construction of a two story ohana dwelling and garage.
  - f. Building Permit No. 925738 opened on May 27, 1992 and closed on August 27, 1992 for construction of a greenhouse.
3. A survey map prepared by Don McIntosh Consulting on August 5, 1997, shows the existing two story single family dwelling and lanai with a 10.00 to 14.16 feet side yard in lieu of the minimum 15 feet side yard. As such the dwelling and lanai encroaches 10-1/8 inches to 5 feet into the required 15 feet side yard.
  4. The survey map shows the existing greenhouse with a 9.70 to 14.70 feet side yard in lieu of the minimum 15 feet side yard. As such, the greenhouse encroaches by 3-5/8 inches to 5 feet 3-5/8 inches into the required 15 feet side yard.
  5. The homeowners at that time the building permits were approved, received all of the necessary Department of Public Works, Building Division approvals for dwelling, lanai and greenhouse.
  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, lanai and greenhouse in 1983.
  7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1983 when the dwelling, lanai and greenhouse 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.

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8. It has been over 14 years since the construction of the existing dwelling, lanai and greenhouse 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, lanai and greenhouse.
9. The variance application was filed with the Planning Department on September 16, 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 applicants. 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, lanai and greenhouse 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 lanai on the subject property is presently into the side yard by 10-1/8 inches to 5 feet in the required 15 feet side yard. The greenhouse encroaches by 3-5/8 inches to 5 feet 3-5/8 inches into the required 15 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 15 feet side yard in this

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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, lanai and greenhouse 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. 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.

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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