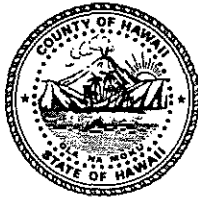


Stephen K. Yamashiro
Mayor



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 417 379 048

November 10, 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(VAR97-63)
Variance No. 868
Applicant: ROBERT D. TRIANTOS, ESQ.
Owners: DON G. ANDERSON and JANET M. ANDERSON
Variance from Minimum Front and Side Yard Requirements
Tax Map Key: 7-6-022: 006

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 19.40 feet front yard in lieu of the minimum 20 feet front yard, a 9.85 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)(A)(B).

The subject property is located in the Komohana Kai Subdivision, Lot 6, Unit 1, At Holualoa 1 & 2, North Kona, Hawaii, Tax Map Key: 7-6-022: 006.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 15,674 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
 - a. Building Permit No. 005779 opened on February 24, 1983 and closed on July 14, 1983 for the construction of a single family dwelling, garage, and lanai.

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3. A survey map prepared by Don McIntosh Consulting on July 22, 1997, shows the existing one story single family dwelling with a 19.40 feet front yard in lieu of the minimum 20 feet front yard. As such the dwelling encroaches 7-1/4 inches into the required 20 feet front yard.
4. The survey map shows the existing one story single family dwelling with a 9.85 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling encroaches by 1-7/8 inches into the required 10 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.
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 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 was 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 14 years since the construction of the existing dwelling 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.
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

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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 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 on the subject property is presently 7-1/4 inches into the required 20 feet front yard. In addition the dwelling encroaches by 1-7/8 inches into the required 10 feet side yard. These encroachments into the front and 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 20 feet front yard and 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 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

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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. The applicant shall obtain the necessary permits for the unpermitted additions from the Department of Public Works.
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.

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