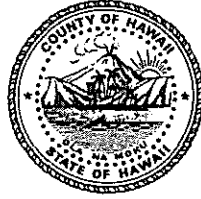


Stephen K. Yamashiro
Mayor



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) 961-8742

CERTIFIED MAIL
P 417 379 076

December 9, 1997

Mr. Loyd Potter
Wiliki Management Company
P.O. Box 2653
Kailua-Kona, Hawaii 96745

Dear Mr. Potter:

Variance Application WH(VAR97-75)
Variance No. 877
Applicant: WILIKI MANAGEMENT COMPANY
Owner: DANIEL T. TOMITA
Variance from Minimum Side Yard Requirements
Tax Map Key: 7-3-034: 063

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 9.80 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).

The subject property is located at Kona Palisade Subdivision, Lot 168, Unit II, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-034: 063.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,697 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
 - a. Building Permit No. 895590 opened on May 12, 1989 and closed on November 22, 1989 for the construction of a single family dwelling, carport, deck and stairwell.

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- b. Building Permit No. 915086 opened on January 24, 1991 and closed on April 14, 1997 for an addition to the single family dwelling.
 - c. Building Permit No. 975410 opened on May 5, 1997 and remains open, for an addition to the single family dwelling.
3. A survey map prepared by KKM Surveys on May 20, 1997, shows the existing two story single family dwelling with a 9.8 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling encroaches 2-3/8 inches into the required 10 feet side yard.
 4. When the building permits were approved, the homeowner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
 5. When approved by the Planning Department, the plans would have shown that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1989.
 6. 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 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.
 7. It has been over 8 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 the disclosure of all facts concerning the dwelling.
 8. The variance application was filed with the Planning Department on October 13, 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

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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 being placed on the applicant and 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 2-3/8 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 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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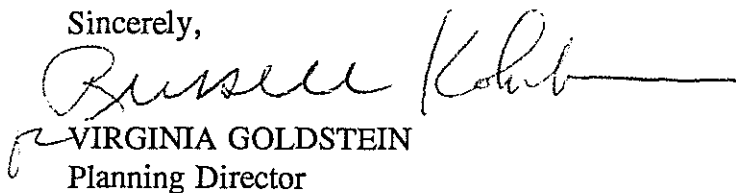
submitted to the Planning Department within a year from the effective date of approval of this variance.

3. If applicable, approval from the Board of Appeals for all Housing and Building Code Violations will be obtained.
4. The applicant shall remove any encroachments within the County right-of-way, including the CRM wall, or obtain approval from the Department of Public Works, Engineering Division.
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