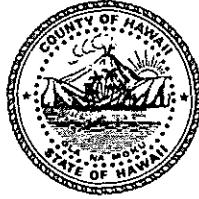


Stephen K. Yamashiro
Mayor



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 417 379 079

December 11, 1997

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

Dear Mr. McIntosh:

Variance Application WH(VAR 97-80)
Variance No. 880
Applicant: DON MCINTOSH CONSULTING
Owner: DAVID J. COWLEY AND MARY K. COWLEY
Variance from Minimum FRONT YARD OPEN SPACE Requirements
Tax Map Key: 6-8-017:061

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an EXISTING DETACHED CARPORT with a 13.02 feet front yard open space in lieu of the minimum 14 feet open space, as required by Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located in the Waikoloa Village Subdivision, Unit 1-D, Lot 196, at Waikoloa, South Kohala, Hawaii, Tax Map Key: 6-8-017:061.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 19,144 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
 - a. Building Permit No. 842179 opened on December 6, 1984 and closed on August 13, 1985 for the construction of a single family dwelling with a screened lanai.

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- c. Building Permit No. 926465 opened on November 30, 1992 and closed on March 3, 1994 for an addition to the single family dwelling.
3. A survey map prepared by Don McIntosh Consulting on August 12, 1995, shows the Existing detached carport with a 13.02 feet front yard open space in lieu of the minimum 14 feet front yard open space. As such, the carport encroaches by 11-3/4 inches into the required 14 feet open space.
4. At that time the building permits were approved, the owners received all of the necessary Department of Public Works, Building Division approvals for the detached carport.
5. When approved by the Planning Department, the plans would have had to have shown that all minimum required setbacks were going to be adhered to for the proposed detached carport in 1985.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1985 when the detached carport was constructed. There also appears to have been a very minor siting error at the time of construction with regard to the encroachments. No other evidence has been found to show otherwise.
7. It has been over 12 years since the construction of the detached carport 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 detached carport.
8. The variance application was filed with the Planning Department on October 15, 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 them . The investigation of this particular matter

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1. The applicants on their own volition are honestly trying to resolve this long standing problem which was not created by them . The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.
2. Any architectural alterations or design changes to the carport to conform with the minimum setbacks would create undue and excessive hardships for 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 when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing detached carport on the subject property is presently 11-3/4 inches into the required 14 feet open space. This encroachment into the front yard open space will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 14 feet open space 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 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 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 area's character or to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, assigns or successors, shall be responsible for complying with all stated conditions of approval.


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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 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,



fr VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office