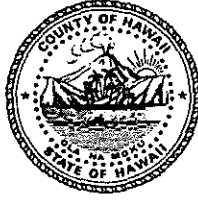


Stephen K. Yamashiro
Mayor



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 417 369 992

February 17, 1998

Mr. Gregory R. Mooers
P.O. Box 1101
Kamuela, Hawaii 96743

Dear Mr. Mooers:

Variance Application WH(VAR 97- 95)

Variance No. 894

Applicant: GREGORY R. MOOERS

Owner: WILLIAM B. AND ABBY J. ROGERS

Request: Variance from Minimum Rear Yard and Open Space Requirements

Tax Map Key: 7-6-020: 019

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling, garage and storage with a 3 feet side yard open space in lieu of the minimum 4 feet open space; a 14.50 feet rear yard in lieu of the minimum 15 feet rear yard, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A)(B) and Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located in the Kilohana Subdivision, Lot 19, Unit 1-A-F.P. 1304, at Holualoa 1 & 2, North Kona, Hawaii, Tax Map Key: 7-6-020: 019.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 7,506 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 896059 opened on August 21, 1989 and closed on December 28, 1989 for the construction of the dwelling.

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- b. Building Permit No. 935415 opened on April 26, 1993 and closed on December 8, 1993 for the construction of a deck.
3. A survey map prepared by John D. Weeks, Inc., on January 15, 1997, shows the existing two story single family dwelling with a 3 feet side yard open space in lieu of the minimum 4 feet open space. As such the dwelling encroaches 1 foot into the required 4 feet open space.
4. The survey map shows the existing two story single family dwelling with a 14.50 feet rear yard in lieu of the minimum 15 feet rear yard. As such the dwelling encroaches 6 inches into the required 15 feet rear yard.
5. When the building permit was approved, the owners received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
6. 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 dwelling 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 was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
8. It has been over 8 years since the construction of the existing dwelling 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 building.
9. The variance application was filed with the Planning Department on December 12, 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 owners 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.

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ALTERNATIVES

1. The owners 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 building to conform with the minimum setbacks would create undue and excessive hardships for the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable solutions available without excessive demands being placed on the owners 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 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 1 foot into the required 4 feet open space and 6 inches into the required 15 feet rear yard. These encroachments into the open space and rear yard 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 4 feet open space and 15 feet rear 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 area's character and to adjoining properties.

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

1. The owner, 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. The owner shall comply with the requirements of the Department of Public Works for the pedestrian walkway.
4. If applicable, approval from the Board of Appeals for all Building Code Violations will be obtained.
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

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xc: West Hawaii Office