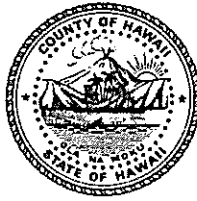


Stephen K. Yamashiro
Mayor



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

Z 179 517 492

March 6, 1998

Mrs. Linda Van Mierlo
101 Aupuni Street, #610
Hilo, HI 96720

Dear Mrs. Van Mierlo:

Variance Permit No. 898 (VAR 97-74)

Applicant: LINDA VAN MIERLO

Owner: LINDA VAN MIERLO

Request: Variance From the Minimum Yards and Permitted Projections Into
Yard and Open Spaces, Pursuant to Chapter 25, Zoning, December 7, 1996

Tax Map Key: 2-4-022:137

After reviewing your variance application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow the retention of the existing dwelling with a rear yard of 18.92 feet in lieu of the minimum 20 feet rear yard pursuant to Section 25-5-7, (a), (2), (A).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum rear yard and associated open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel, "LOT F", containing 10,831 square feet, is part of Unit II of the Komohana Gardens Subdivision, F. P. 1204, Waiakea Homesteads, Second Series, South Hilo, Hawaii. The property is identified by TMK: 2-4-022:037 and is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the State Land Use Commission (LUC).
2. The original dwelling and related site improvements were constructed under Building Permit B No.812777 which was opened on November 11, 1981 and closed on April 4, 1982 by the Department of Public Works (DPW), Building Division in Hilo. A second Building Permit B No. 971085 to enclose a breezeway and other interior building alterations was opened on August 26, 1997 and closed on August 28, 1997. For the record, a double permit fee was assessed by the DPW to issue B No. 971085, because the subject improvements were started without a building permit.
3. The survey map dated September 6, 1997, drawn to scale, accurately identifies the location of the existing "ONE-STORY RESIDENCE" with an 18.92 feet rear yard in lieu of the minimum 20 feet rear yard requirement.
4. The required building inspections by the effected government agencies of the new dwelling and related site improvements occurred during the processing of B No. 812777.
5. The existing building encroachments within the affected rear yard went undetected by government agencies and the public for over 15 years.
6. To date, no comments have been received from the Department of Public Works (DPW), the State Department of Health, and the Department of Finance-Real Property Tax office .
7. No objections to the variance application were received from the surrounding property owners.

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.

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ALTERNATIVES

1. The owner on her own volition is honestly trying to resolve this long standing problem which was not created by her. 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 dwelling 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 applicants when a more reasonable alternative is available by the granting of this variance application.

The Planning Department acknowledges there may be other design or building alternatives available to the owner than those recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owner or applicant when a more reasonable alternative is available by the granting of the subject variance request.

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 permitted structures and property lines. The existing dwelling and related building improvements were constructed under a valid building permit issued in 1982 to previous owners. Building inspections of the premises, during building construction and throughout the life of the original building permit in 1982 did not disclose any building setback irregularities. The previous owners felt all Zoning Code and building permit requirements had been observed, satisfied, and met. It appears the existing building encroachments within the affected rear yard was created and induced by a cumulation of mapping discrepancies and interpretation of the minimum yards during construction of the original dwelling. Inspection of the property by the DPW regarding the building permits issued 1982 and 1997 did not uncover or disclose any encroachment into any minimum building yards or other building setback problems.

The subject variance application was deemed complete by certified letter on October 1, 1997.

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

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Code, and the County General Plan. Furthermore, the variance request 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.

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 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, March 5, 1998.
3. The owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance and building permits.
3. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,


for VIRGINIA GOLDSTEIN
Planning Director

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xc: Real Property Tax Office