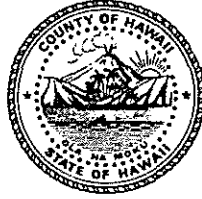


Stephen K. Kamashiro
Mayor



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 417 370 056

May 18, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR 98-014)
Variance No. 923
Applicant: JOHN L. GARDNER & DORIS M. GARDNER
Owner: JOHN L. GARDNER & DORIS M. GARDNER
Request: Variance from Minimum Side Yard Requirements
Tax Map Key: 7-7-019: 029

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling with a 9.75 to 9.97 feet side yard in lieu of the minimum 10 feet side yard, as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B), Ord. 97-88.

The subject property is located at Kuakini Heights Subdivision, Lot 29, Unit II, Por. Laaloa 1st, Laaloa 2nd and Kapalaalaea 1st, North Kona, Hawaii, Tax Map Key: 7-7-019: 029.

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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,724 square feet of land area.
2. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 000128 opened on November 13, 1972 and closed on May 17, 1972 for the construction of the dwelling.
 - b. Building Permit No. 004910 opened on April 16, 1981 and closed on June 13, 1983 for an addition to the dwelling.
3. A survey map prepared by Don McIntosh Consulting, on December 2, 1994, shows the existing one story single family dwelling with a 9.75 to 9.97 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling encroaches 3/8 inch to 3 inches into the required 10 feet side yard.
 4. When the building permit was approved, the owner 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 had to have shown that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1972.
 6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1972 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.
 7. It has been over 26 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 dwelling.
 8. The variance application was filed with the Planning Department on March 17, 1998.

There were no objections from any of the participating government agencies or any 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 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 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 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 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 3/8 inch to 3 inches into the required 10 feet side yard. This encroachment into the side 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 10 feet side yard in this particular case, the encroachment is 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.

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 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

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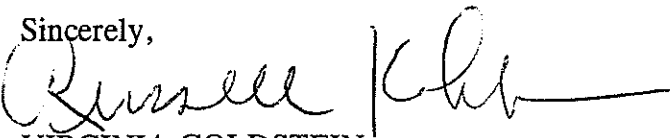
submitted to the Planning Department within a year from the effective date of approval of this variance.

3. If applicable, approval from the Board of Appeals for all 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,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
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xc: West Hawaii Office