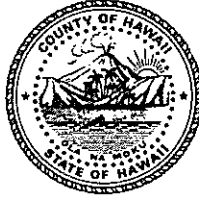


Stephen K. Yamashiro
Mayor



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 417 370 068

May 27, 1998

Robert D. Triantos, Esq.
Carlsmith Ball Wichman Case & Ichiki
P.O. Box 1720
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

Variance Application WH(VAR 98-024)
Variance No. 928
Applicant: ROBERT D. TRIANTOS
Owner: DARWIN AND DEANNA HAMMERSLEY
Request: Variance from Minimum Side Yard, Rear Yard and Open Space
Requirements
Tax Map Key: 7-3-032: 052

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 8 feet side yard in lieu of the minimum 10 feet side yard, a 2.40 feet side yard open space in lieu of the minimum 5 feet open space, a 18.90 feet rear yard in lieu of the minimum 20 feet rear yard, a 13.90 feet rear yard open space in lieu of the minimum 14 feet rear yard open space, as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B), Ordinance 97-88, and Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located at Kona Palisade Subdivision, Lot 207, Unit 1, Being a Portion of Grant 2972 to Kaapau and Kama, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-032: 052.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 11,384 square feet of land area.

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2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 49936 opened on October 4, 1971 and closed on September 5, 1972 for the construction of the dwelling.
 - b. Building Permit No. 53009 opened on September 12, 1972 and closed on August 23, 1972 for a fireplace.
3. A survey map prepared by Wes Thomas Associates, on March 9, 1998, shows the existing one story single family dwelling with a 8 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling encroaches 2 feet into the required 10 feet side yard.
4. The survey map shows the existing one story single family dwelling with a 2.40 feet side yard open space in lieu of the minimum 5 feet open space. As such the dwelling encroaches 2 feet 7-1/4 inches into the required 5 feet open space.
5. The survey map shows the existing one story single family dwelling with a 18.90 feet rear yard in lieu of the minimum 20 feet rear yard. As such the dwelling encroaches 1 foot 1-1/4 inches into the required 20 feet rear yard.
6. In addition, the survey map shows the existing one story single family dwelling with a 13.90 feet rear yard open space in lieu of the minimum 14 feet rear yard open space. As such the dwelling encroaches 1-1/4 inch into the required 14 feet open space.
7. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
8. 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 1971.
9. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1971 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.
10. It has been over 27 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

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control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.

11. The variance application was filed with the Planning Department on April 8, 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.

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 2 feet into the required 10 feet side yard, 2 feet 7-1/4 inches into the required 5 feet side yard open space, 1 foot 1-1/4 inches into the required 20 feet rear yard and 1-1/4 inch into the required 14 feet open space. These encroachments into the side yard, rear yard and 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 10 feet side yard, 5 feet side yard open space, 20 feet rear yard and 14 feet rear yard open space, in this particular case, the encroachments are

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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 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 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 encroachments within the County right-of-way shall be removed.
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

a:\73032052\hammersley.app

xc: West Hawaii Office