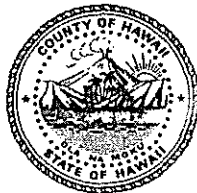


Stephen K. Yamashiro
Mayor



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 417 370 080

June 19, 1998

Mr. George P. Lucas
P.O. Box 1986
Kailua-Kona, Hawaii 96745-1986

Dear Mr. Lucas:

Variance Application WH(VAR 98-026)
Variance No. 932
Applicant: GEORGE P. LUCAS
Owners: GEORGE P. AND MARY C. LUCAS
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-3-003: 007

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request to allow a proposed one story garage with a 5.0 feet side yard in lieu of the minimum 8 feet side yard, as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B), Ordinance 97-88.

Please accept our sincere apologies for this tardy confirmation of the denial for your 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.

The subject property is located at Makaula Makai Condominium Project, Being Portions of Lot 1 and Grant 3741 to W.H. Kailiino, Makaula, North Kona, Hawaii, Tax Map Key: 7-3-003: 007.

The Planning Director has concluded that the variance request from the minimum side yard requirements should be denied based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,000 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
 - a. Building Permit No. 43349 issued on December 10, 1969 for the construction of a single family dwelling.
3. A survey map prepared by Wes Thomas Associates, on February 19, 1998, shows the fifteen foot front yard, fifteen foot rear yard and 8 foot side yard setbacks.
4. A plat map prepared by Richtor Reynolds and Merrill Kittinger for Building Permit No. 985319 opened on March 31, 1998 shows the proposed open deck and garage with an 8 foot side yard. The permit remains open.

CHRONOLOGY - MAKAULA MAKAI CONDOMINIUM PROJECT

5. **December 22, 1993:** Change of Zone Application No. 93-001 was approved by the County Council from Agricultural-5 acre (A-5a) to Single Family Residential -7,500 (RS-7.5) zoned district. The subject properties affected were TMK: 7-3-003:007 and 017.
6. **December 16, 1994:** The Planning Director approved Planned Unit Development No. 94-002 (White Hat Development Corporation University Heights Subdivision) to allow for the creation of a proposed 108 unit single family residential subdivision within the RS-7.5 zoned district with variances from the front, rear and side yard setbacks, minimum building site average width, minimum building site area, minimum yard between accessory and main structure requirements and variances from the Subdivision Code.
7. **June 24, 1996:** Subdivision No. 6752 was approved to allow the subdivision of the 23.926 acre parcel into 2 lots. Lot 1 consisting of .988 acres and Lot 2 consisting of 22.938 acres.
8. **October 11, 1996:** Subdivision No. 6972 was granted tentative approval for a 50 lot residential subdivision.
9. **March 13, 1997:** Declaration of Condominium property Regime of "Makaula Makai", recorded in the Bureau of Conveyances of the State of Hawaii as Document

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No. 97-036958, created a three lot condominium project. The applicant's property is designated Unit A.

NATURE OF REQUEST

10. The applicant is unable to comply with the minimum requirements of the Zoning Code for the proposed garage and has applied for this variance.
11. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
12. 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 1969.
13. It has been over 29 years since the construction of the existing dwelling was approved by the County and the applicant has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and proposed garage.
14. The variance application was filed with the Planning Department on April 16, 1998.

There were three objections from surrounding property owners

Therefore, considering the foregoing facts, the Planning Director has determined that there are no 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. Any architectural alterations or design changes to the proposed garage to conform with the minimum setbacks would not create undue and excessive hardships on the applicant.
2. Considering the history of the development of the property, the alternatives available to the applicant consists of whether or not the applicant is reasonably able to correct the encroachment. In this case, the denial of this variance request is determined to be reasonable. As such, the applicant has other alternatives in which to comply with the minimum side yard setback requirements.

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3. The applicants ability to comply with the minimum side yard setback requirements is available without a variance. Therefore, although it will involve costs for the applicant, it is not expected to be an unreasonable option due to the circumstances.

Based on the above cited considerations, there are other reasonable alternatives that would resolve the difficulty.

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.

Therefore, while the Zoning Code requires a minimum 8 feet side yard, in this particular case the garage as proposed would encroach 3 feet into the required 8 feet side yard.

Neither the Department of Public Works, Building Division nor the Planning Department is responsible for ensuring that any proposed structure will comply with the required setbacks. The responsibility for ensuring that the structures are situated in accordance with the approved construction plans and building permit rests with the landowner.

Based on the foregoing findings, this variance request would not 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 would be materially detrimental to the public's welfare and would cause substantial adverse impact to the area's character and to adjoining properties.

Therefore, this variance request is denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$250); and
2. Ten copies of the completed application form and contents, including a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of sixty days from the date of receipt of a properly filed appeal, unless that period is waived by the applicant. Within ninety days after the close of the public hearing or within

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such longer period as may be agreed to by the applicant, the Planning Commission shall affirm, modify, or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-2-4 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office