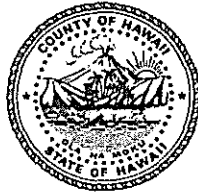


Stephen K. Yamashiro
Mayor



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 417 370 153

October 6, 1998

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

Dear Mr. Triantos:

Variance Application WH(VAR 98-052)
Variance No. 960
Applicant: ROBERT D. TRIANTOS, ESQ.
Owner: JACK L. LEE
Variance from Minimum Side Yard Requirements
Tax Map Key: 7-3-030: 026

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling with a 9.60 foot side yard and detached carport with enclosed storage with a 9.80 foot side yard in lieu of the minimum 10 feet side yard as required by Chapter 25, Article 5, Division 1, Section 25-5-7 (a)(2)(B) and Ordinance No. 97-88.

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.

The subject property is Lot 66, Kona Palisades, Unit 1, being a portion of Grant 2972 to Kaapau and Kama at Kalaoa 4th, North Kona, Hawaii, TMK: 7-3-030: 026.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,390 square feet of land area.

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2. The subject single family dwelling was issued the following:
 - a. Building Permit No. 250 opened on February 14, 1973 and closed on January 25, 1978 for a single family dwelling.
 - b. Building Permit No. 588 opened on October 25, 1973 for a detached carport.
3. A survey map prepared by Wes Thomas & Associates on April 6, 1998 shows the existing one story single family dwelling with 9.6 feet side yard and a detached carport with a 9.8 feet side yard in lieu of the required 10 feet side yard. As such, a corner portion of the subject dwelling encroaches 4 and 7/8 inches a corner portion of the detached carport encroaches 2 and 3/8 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 and detached carport.
5. When approved by the Planning Department, the plans would have had to have shown that all minimum required setbacks were going to be adhere to for the dwelling in 1973.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1973 when the dwelling and detached carport 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 25 years since the construction of the existing dwelling and detached carport which was approved by the County, and the applicant is trying to resolve a situation which he had no control over and have honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling and the detached carport.
8. The variance application was filed with the Planning Department on August 7, 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

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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 of the applicant 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 owner when a more reasonable alternative is available by the granting of this variance application.

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 structures and property lines. The southwest corner of the existing one story single family dwelling presently encroaches 4 and 7/8 inches into the 10 foot side yard and a corner portion of the detached carport encroaches 2 and 3/8 inches into the required 10 foot side yard. These encroachments into the side yard are minor and are not visually perceptible that it will diminish the ability for adequate light, air and open space. Therefore, while the Zoning Code requires a minimum 10 foot side yard, in this particular case, the encroachment 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.

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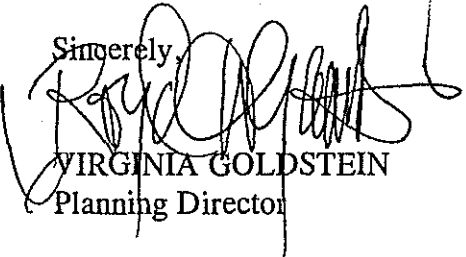
This variance request is approved, subject to the following conditions:

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. Any encroachments within the County right-of-way shall be removed.
4. The applicant shall comply with the Hawaii County Code, Chapter 22, driveway requirements.
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