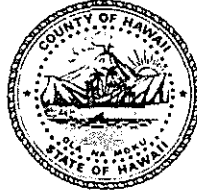


Stephen K. Yamashiro
Mayor



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 417 370 173

November 20, 1998

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

Dear Mr. McIntosh:

Variance Application WH(VAR 98-66)
Variance No. 972
Applicants: ARTHUR K. AND CASSANDRA BELL
Owners: ARTHUR K. AND CASSANDRA BELL
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-7-022: 001

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 and garage with a 9.77 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), and Ordinance 97-88.

The subject property is located at Lot 1, Keauhou Uka Subdivision, Unit I, at Kapalaalaea 2nd, North Kona, Hawaii, Tax Map Key: 7-7-022: 001.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10, 893 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. K05075 opened on August 19, 1981 and closed on January 12, 1982 the construction of a dwelling.

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- b. Building Permit No. K05211 opened on December 9, 1981 and closed on July 11, 1983 for the installation of solar water heating system.
 - c. Building Permit No. 945575 opened on July 26, 1994 and closed on February 18, 1998 for enclosure of the entry and covered decks.
3. A survey map prepared by Donald C. McIntosh on July 30, 1998, shows the existing single story single family dwelling with a 9.77 foot side yard in lieu of the minimum 10 foot side yard. As such the dwelling encroaches 2-3/4 inches into the required 10 foot 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 dwelling in 1981.
 6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1981 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 17 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 September 29, 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 applicant 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 encroaches 2-3/4 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 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

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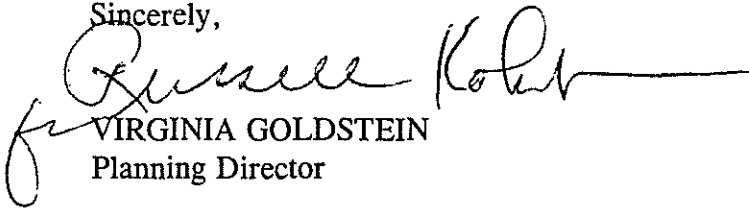
submitted to the Planning Department within a year from the effective date of approval of this variance.

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
a:\77022001\vbell.app

xc: West Hawaii Office