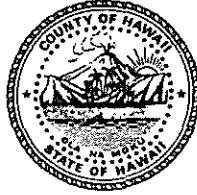


Stephen K. Yamashiro
Mayor



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
Z 188 432 619

May 20, 1999

Mr. Frank Moger
78-6978A Walua Road
Kailua-Kona, Hawaii 96740

Dear Mr. Moger:

Variance Application WH(VAR 99-016)
Variance No. 1008
Applicant: FRANK MOGER
Owner: FRANK MOGER
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-8-018: 019

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 attached garage with a 8.7 to 8.9 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), Ordinance 97-88.

The subject property is located at Kuakini House Lots, Lot 19-A, Being a Portion of R.P. 4475 and 6856, L.C. Aw. 7713:6 to V. Kamamalu, at Kahaluu, North Kona, Hawaii, Tax Map Key: 7-8-018: 019.

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 20,205 square feet.

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2. The subject property is part of the Kuakini House Lots.
3. The following building permits were issued:
 - a. Building Permit No. 45103 opened on June 23, 1970 and closed on June 18, 1971 for the construction of a one story single family dwelling.
 - b. Building Permit No. 801523 opened on June 13, 1980 and closed on February 19, 1999 for the construction of an addition to the dwelling.
4. A survey map prepared by KKM Surveys on February 1, 1999, shows the existing one story single family dwelling and attached garage with a 8.7 to 8.9 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling and attached garage encroach 1 foot 1-1/4 inches to 1 foot 3-5/8 inches into the required 10 feet side yard.
5. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and attached garage.
6. 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 and attached garage in 1970.
7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1970 when the dwelling and attached garage were 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.
8. It has been over 29 years since the construction of the existing dwelling and attached garage were approved by the County, and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and attached garage.
9. The variance application was filed with the Planning Department on March 11, 1999.

There were no objections from any adjacent or 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

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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 owner on his own volition is honestly trying to resolve this long standing problem which was not created by him. 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 building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling encroaches 1 foot 1-1/4 inches to 1 foot 3-5/8 inches into the required 10 feet side yard. These encroachments 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 encroachments 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.

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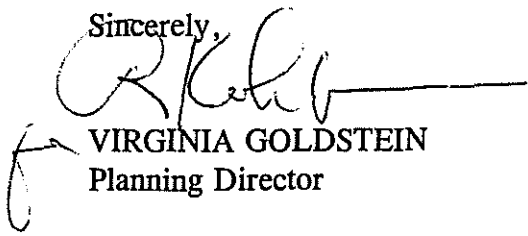
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2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. 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 Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office