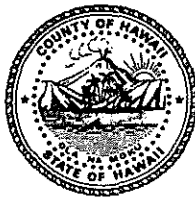


Stephen K. Yamashiro
Mayor



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 472 692 343

August 13, 1999

Mr. J. Langston Ewell
P. O. Box 958
Kailua-Kona, Hawaii 96745-0958

Dear Mr. Ewell:

Variance Application WH(VAR 99-055)
Variance No. 1043
Applicant: J. LANGSTON EWELL
Owners: RANDALL AND GAIL BRADEN
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-4-004:018

We regret to inform you that after reviewing your application and the additional information submitted, the Planning Director denies the approval of your variance request to allow a proposed three car garage with a 1.20 feet side yard in lieu of the minimum 15 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 5, Section 25-5-56(2)(A), Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

Please accept our sincere apologies for this tardy denial of 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 located at 74-4986 Palani Road, Kealakehe Homesteads First Series, Kealakehe, North Kona, Hawaii, Tax Map Key: 7-4-004: 018.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 29,274 square feet of land area.
2. The subject single family dwelling was issued the following building permit:

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- a. Building Permit No. 955184 opened on March 3, 1995 and closed on May 31, 1995 for the construction of a single family dwelling and detached carport.
3. A site map prepared by J. Langston Ewell, on April 20, 1999 shows the proposed three car garage with a 1.20 feet side yard with a side yard setback of 25 feet. The Zoning Code requires a minimum side yard setback of 15 feet. As such, the proposed garage would encroach 13 feet 9-5/8 inches into the required 15 feet side yard.
4. The variance application was filed with the Planning Department on June 4, 1999.

There were no objections from any adjacent or surrounding property owners.

There is no evidence submitted which shows or justifies the necessity for approval of the variance or for any special or unusual circumstances related to the property. 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. The subject property is a rectangular shaped parcel with side yard setbacks as required by the Zoning Code.
2. The surrounding area consists of a mixture of single-family residences and vacant lots. The subject parcel is situated near the Kona Harbor View Subdivision. The zoning pattern in the vicinity is a mixture of Single Family Residential (RS-7.5), Single Family Residential (RS-10), Agricultural -1 acre (A-1a) and Agricultural -5 acre (A-5). Across the parcel is the Creative Day Preschool.
3. The parcel is large enough that any accessory structures could be constructed by meeting the minimum Zoning Code setback requirements.
4. The applicants ability to comply with the minimum side yard setback requirements is available without a variance, although it will involve costs for the applicant, it is not expected to be an unreasonable option due to the circumstance.

The Zoning Code is applied and administered within the framework of the general plan which is a long range, comprehensive, general plan prepared to guide the overall future development

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of the County. Within this frame work, the Zoning Code purpose is to promoting health, safety, morals, or the general welfare of the County, and regulate and restrict the height, size of buildings, other structures, the percentage of a building site that may be occupied, off-street parking, setbacks, size of yards, courts, open spaces, density of population, location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

The applicant has proposed to construct a 3-car garage with a 1.20 feet side yard in lieu of the minimum 15 feet side yard. The proposed construction is not suitable and may create features or conditions likely to be harmful or dangerous to the health, safety and welfare of future residents of the proposed subdivision or of the surrounding neighborhood.

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 Zoning Code requires a minimum 15 feet side yard, in this particular case, the proposed encroachment will visually and physically impact or be adverse to any adjacent properties or development with the granting of this variance.

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. In addition, should this variance application be approved, without regard to the required minimum setbacks, it may lead to similar requests by owners of surrounding properties.

The Planning Director recognizes the desire of people who wish to construct additional structures on their properties. However for the Planning Director to support this particular request in light of the deficiencies noted above would not be consistent with the general purpose of the zoning district and, the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan; furthermore, this variance will be materially detrimental to the public's welfare and will cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is therefore denied.

The Planning Director's decision is final, except that within thirty days after the date of the written decision, the applicant may appeal such action to the Board of Appeals. Effective March 3, 1999, the Hawaii County Board of Appeals are be required to hear and determine appeals from final decisions of the Planning Director. This is pursuant to a recent amendment to the County Charter as adopted by the voters of the County of Hawaii at the general election held on November 3, 1998.

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An application for an appeal to the Board of Appeals is attached for your convenience.

Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,



f VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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Enclosure

xc: West Hawaii Office