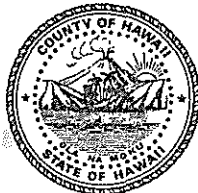


Stephen K. Yamashiro  
Mayor



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 472 692 361

September 16, 1999

Ms. Anne Mapes  
Belt Collins Hawaii  
680 Ala Moana Blvd., First Floor  
Honolulu, Hawaii 96813

Dear Ms. Mapes:

Variance Application WH(VAR 99-056)

Variance No. 1049

Applicant: ANNE MAPES - BELT COLLINS HAWAII

Owners: WILLIAM F. AND MARILYN J. MIELCKE

Request: Variance From Minimum Side Yard And Open Space Requirements

Tax Map Key: 7-7-003: 044

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 with a 14.7 feet side yard in lieu of the minimum 15 feet side yard and a 9.7 feet side yard open space in lieu of the 10 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 5, Section 25-5-56(2) and Article 4, Division 4, Section 25-4-44(a), Ordinance 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 located at Kona Sunshine Subdivision, being a Portion of R.P. 8289, L.C. Aw. 7228 to Loe, at Holualoa 4th, North Kona, Hawaii, Tax Map Key: 7-7-003:034.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of .639 acres of land area.

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2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 45711 opened on June 25, 1970 and closed on April 22, 1971 for the construction of a single family dwelling.
  - b. Building Permit No. 1855 opened on September 17, 1976 and closed on September 22, 1976 for the repair of the lanai.
3. A survey map prepared by the Wes Thomas Associates on October 14, 1997 shows the existing one story single family dwelling with a 14.7 feet side yard in lieu of the minimum 15 feet side yard. As such, the dwelling encroaches 3-5/8 inches into the required 15 feet side yard.
4. The survey map shows the existing one story single family dwelling, with a 9.7 feet side yard open space in lieu of the minimum 10 feet open space. The dwelling encroaches 3-5/8 inches into the required 10 feet open space.
5. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
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 in 1970.
7. There appears to have been a construction staking error in the siting of the structures on the property. This occurred in 1970 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.
8. It has been over 29 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 and improvements.
9. The variance application was filed with the Planning Department on June 25, 1999.

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

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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 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 3-5/8 inches into the required 15 feet side yard and 3-5/8 inches into the required 10 feet open space. These encroachments into the side yard and open space 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 15 feet side yard and 10 feet open space 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.
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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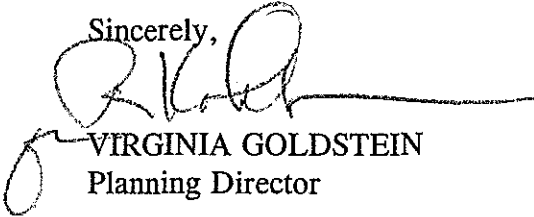
submitted to the Planning Department within a year from the effective date of approval of this variance.

3. 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