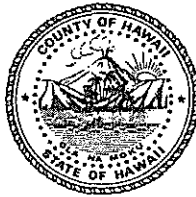


Stephen K. Yamashiro
Mayor



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 472 692 371

September 30, 1999

Mr. Robert D. Triantos
Carlsmith Ball
P.O. Box 1720
Kailua-Kona, Hawaii 96740

Dear Mr. Triantos:

Variance Application WH(VAR 99-062)
Variance No.1051
Applicant: ROBERT D. TRIANTOS
Owner: ALBERT A. GULICK
Request: Variance From Minimum Side Yard, Rear Yard and Open Space
Requirements
Tax Map Key: 7-6-022: 030

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling and accessory structures with a 6.54 to 8.68 feet side yard in lieu of the minimum 10 feet side yard, a 4.30 feet side yard open space in lieu of the minimum 5 feet open space and a 17.12 feet rear yard in lieu of the minimum 20 feet rear yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(B) and Article 4, Division 4, Section 25-4-44(a), Ord. 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 Komohana Kai Subdivision, Lot 30, Unit 1, at Holualoa 1 & 2, North Kona, Hawaii, Tax Map Key: 7-6-022: 030.

008880

OCT 01 1999

Mr. Robert D. Triantos

Page 2

September 30, 1999

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 15,000 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. K05177 opened on November 9, 1981 and closed on December 2, 1982 for the construction of a single family dwelling.
 - b. Building Permit No. K05279 opened on January 21, 1982 and closed on December 2, 1982 to enlarge lower level.
 - c. Building Permit No. K05681 opened on November 26, 1982 and closed on December 2, 1982 for the addition of a spa and decking.
3. A survey map prepared by Don McIntosh on May 25, 1999 shows the corner of the detached garage and hot tub with a 6.54 feet to 8.68 feet side yard in lieu of the minimum 10 feet side yard. As such, the detached garage and hot tub encroaches 1 foot 3-7/8 inches to 3 feet 5-1/2 inches into the required 10 feet side yard.
4. The survey shows the detached garage and hot tub with a 4.30 feet side yard open space in lieu of the minimum 5 feet open space. As such the detached garage encroaches 8-3/8 inches in the required 5 feet open space.
5. The survey shows a corner of the gazebo with a 17.12 feet rear yard in lieu of the minimum 20 feet rear yard. As such the gazebo encroaches 2 feet 10-5/8 inches into the required 20 feet rear yard.
6. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling, detached garage, gazebo and hot tub.
7. 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 detached garage, gazebo and hot tub in 1982.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1982 when the detached garage, gazebo and hot tub 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.

Mr. Robert D. Triantos

Page 3

September 30, 1999

9. It has been over 17 years since the construction of the existing detached garage, gazebo and hot tub 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 improvements.
10. The variance application was filed with the Planning Department on July 19, 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 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 her. 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 detached garage, gazebo and hot tub 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 detached garage and hot tub encroach 1 foot 3-7/8 inches to 3 feet 5-1/2 inches into the required 10 feet side yard and 8-3/8 inches in the required 5 feet open space. The gazebo encroaches 2 feet 10-5/8 inches into the required 20 feet rear yard. These encroachment into the side yard, rear 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 10 feet side yard, 20 feet rear yard and 5 feet open space in this particular case, the encroachments will not visually or physically impact or be adverse to any adjacent

Mr. Robert D. Triantos

Page 4

September 30, 1999

properties or development with the granting of this variance. The rest of the existing dwelling, detached garage, and gazebo 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.

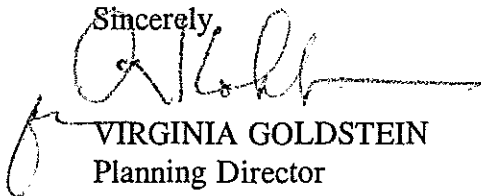
This variance request is approved, subject to the following conditions:

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 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
a:\76022030vgulick.app

xc: West Hawaii Office