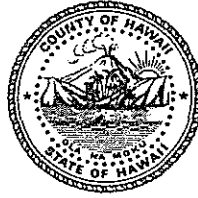


Stephen K. Yamashiro
Mayor



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 472 692 379

October 20, 1999

Mr. and Mrs. Laurence Hawelu
SR4 Volcano Road - Rte 11
Kurtistown, Hawaii 96760

Dear Mr. and Mrs. Hawelu:

Variance Application WH(VAR 99-067)

Variance No. 1057

Applicants: LAURENCE HAWELU AND ANN BEVERIDGE HAWELU

Owners: LAURENCE HAWELU AND ANN BEVERIDGE HAWELU

Request: Variance From Minimum Front Yard Requirements

Tax Map Key: 7-8-009: 055

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow a corner of a proposed three story single family dwelling and carport with a 14 feet front yard in lieu of the minimum 20 feet front yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(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 Kuakini House Lots, Being Lot 1, Extension No. 2 and Portion of Royal Patent 6856 Land Commission Award 7713, Apana 6 to V. Kamamalu, Kahaluu, North Kona, Hawaii, Tax Map Key: 7-8-009: 055.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 24,386 square feet of land area.

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2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 1544 opened on November 4, 1975 and closed on January 9, 1976 for the construction of a single family dwelling.
 - b. Building Permit No. 801505 opened on June 12, 1980 and closed on March 10, 1983 for a solar system.
 - c. Building Permit No. 935877 opened on September 9, 1993 and closed on October 12, 1993 for an open deck.
2. A survey map prepared by Don McIntosh on July 19, 1994 shows the corner of a proposed three story single family dwelling and carport with a 14 feet front yard in lieu of the minimum 20 feet front yard. As such, the single family dwelling would encroach 6 feet into the required 20 feet front yard.
3. On May 15, 1999 a fire consumed the entire single family dwelling leaving the foundation, walls, steps and walkways. The applicant will be using these remanents to reconstruct a new dwelling.
4. When the building permits were approved for the original dwelling 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 1975.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1975 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 24 years since the construction of the dwelling was approved by the County, and the applicant is 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.
8. The variance application was filed with the Planning Department on August 5, 1999.

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The Department has received the following objections from the general public or adjacent landowners:

- a. Christine Yoshimura - (See Exhibit A - Letter dated September 8, 1999) who stated that there would be a loss of view of the ocean and the height of the three story proposed dwelling is not similar to the two story dwelling in the neighborhood.
- b. Virginia and James Wageman - (See Exhibit B - Letter dated September 19, 1999) who stated that the proposed three story dwelling would block the ocean view and the proposed dwelling would out of character.

Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-4, Ordinance 97-88 allows a single family structure with a maximum height limit of thirty five feet. The applicant is not permitted to exceed this height requirement.

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 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 single family dwelling to conform with the minimum setbacks would create undue and excessive hardships for the applicants 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. A corner of the proposed single family dwelling would encroach 6 feet into the 20 feet front yard

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setback. This encroachment into the front 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 20 feet front 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 proposed dwelling will comply with the minimum yard and height 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 structures shall comply with provisions of the Zoning and Building codes.
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.

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

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

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Enclosure

xc: West Hawaii Office