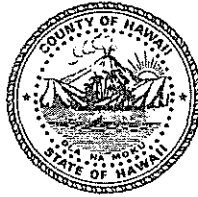


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL
Z 472 692 404

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

December 22, 1999

Mr. Donald C. McIntosh
P.O. Box 58
Kailua-Kona, Hawaii 96745-0058

Dear Mr. McIntosh:

Variance Application WH(VAR 99-083)
Variance No. 1071
Applicant: DON C. MCINTOSH
Owners: WILLIAM V. ANDERSON
Request: Variance From Minimum Rear Yard Requirements
Tax Map Key: 7-7-018: 032

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing above ground pool and deck with a 8.88 to 9.09 feet rear yard in lieu of the minimum 15 feet rear yard as required by Ordinance 96-160, Chapter 25, Article 4, Division 4, Section 25-4-44(a)(3) and Ordinance 97-88.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. At the present time there is a shortage of staff. This personnel shortage will be resolved and result in more timely responses to future applications. Your patience is appreciated.

The subject property is located at Lot 8, White Sands Terrace Subdivision, Unit 2, at Laaloa 1st, North Kona, Hawaii, Tax Map Key: 7-7-018: 032.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,019 square feet of land area.
2. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 936237 opened on December 7, 1994 and closed on December 7, 1999 for the construction of a duplex.
- b. Building Permit No. 986308 opened on November 17, 1998 and closed on December 7, 1999 for a swimming pool.
3. A survey map prepared by Don McIntosh Consulting on June 15, 1999 shows the swimming pool with a 8.88 to 9.09 feet rear yard in lieu of the minimum 15 feet rear yard. As such, the above ground swimming pool encroaches 5 feet 10-7/8 inches to 6 feet 1-3/8 inches into the required 15 feet rear yard.
4. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the swimming pool.
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 swimming pool in 1998.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1998 when the swimming pool 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 1 year since the construction of the existing swimming pool was 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 swimming pool and improvements.
8. The variance application was filed with the Planning Department on September 22, 1999.

There was one objection from an adjacent property owner who stated in her letter dated October 29, 1999 that the swimming pool is a concern for the following reasons:

- a. "No advance notification provide prior to construction of the above ground pool!"
- b. "My roof line and pool line are parallel in height!"
- c. "Backyard view diminished, as well as 24-1hour shadow cast on rear of house."

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- d. "Personal property destruction during pool construction (i.e. vegetation fan palm not informed nor attempt to replant. (12 years old)
- e. "Insurance premium possibly elevated due to pool leakage or natural disaster (i.e. hurricane/wind)
- f. "Noise disturbance risk."
- g. "Extremely close to my house structure (app. 16 ft. difference.)

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 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 above grade swimming pool to conform with the minimum setbacks would create undue and excessive hardship 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. As such, the above ground pool encroaches 5 feet 10-7/8 inches to 6 feet 1-3/8 inches into the required 15 feet rear yard. This encroachment into the rear 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 15 feet rear yard in this particular case, the encroachments will not visually or physically impact or be adverse to any adjacent properties

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or development with the granting of this variance. The rest of the existing improvements 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.

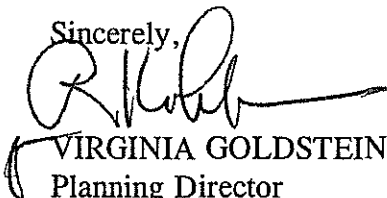
This variance request is approved, subject to the following conditions:

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. The applicant shall obtain final inspection from the Department of Public Works, Building Division on all permits.
4. The applicant shall obtain a building permit for the unpermitted structures.
5. 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