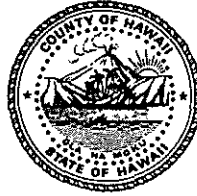


Stephen K. Yamashiro
Mayor



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

P 417 370 205

February 1, 1999

Ms. Yolanda J. Dean
P.O. Box 1144
Kamuela, Hawaii 96743

Dear Ms. Dean:

Variance Application WH(VAR 98-082)
Variance No. 986
Applicant: YOLANDA DEAN
Owner: DENNIS DEAN
Request: Variance From Minimum Side Yard and Open Space Requirements
Tax Map Key: 6-5-009: 036

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 attached garage with a 3.2 feet side yard in lieu of the minimum 8 feet side yard and a 1.30 feet side yard open space in lieu of the minimum 4 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B) and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

The subject property is located at Lot E, Portion of Grant 6309 to Charles Lindsey, at Waimea, South Kohala, Hawaii, Tax Map Key: 6-5-009: 036.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of .666 acres of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 36653 opened on August 7, 1967 and closed in 1969 for the construction of a dwelling, garage, and greenhouse.

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- b. Building Permit No. 802180 opened on August 27, 1980 and closed on January 5, 1981 to install a solar system.
 - c. Building Permit No. 960077 opened on January 16, 1996 and closed on June 6, 1996 for the construction of an addition to the dwelling.
 - d. Building Permit No. 960806 opened on June 18, 1996 and closed on June 28, 1996 to convert the carport into a garage.
 - e. Building Permit No. 981119 opened on August 24, 1998 for the addition of a lanai and conversion of existing carport into a family room. The permit remains open.
3. A survey map prepared by Engineers Surveyors Hawaii, Inc., shows the existing two story single family dwelling and attached garage with a 3.2 feet side yard in lieu of the minimum 8 feet side yard. As such the dwelling and attached garage encroaches 4 feet 9-5/8 inches into the required 8 feet side yard.
 4. The survey map shows the existing two story single family dwelling and attached garage with a 1.30 feet side yard open space in lieu of the minimum 4 feet open space. As such the dwelling and attached garage encroaches 2 feet 8-3/8 inches into the required 4 feet open space.
 5. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and attached garage.
 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 and attached garage in 1967.
 7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1967 when the dwelling and attached garage 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.
 8. It has been over 31 years since the construction of the existing dwelling and attached garage were approved by the County, and the applicant is trying to resolve a situation

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which she had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and attached garage.

9. The variance application was filed with the Planning Department on December 16, 1998.

There were no objections from any adjacent or surrounding property owners. A letter was received from surrounding property owners who stated they had no objections to the variance request.

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 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 buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling and attached garage encroach 4 feet 9-5/8 inches into the required 8 feet side yard and 2 feet 8-3/8 inches into the required 4 feet open space. This encroachment 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 8 feet side yard and 4 feet open space in this particular case, the encroachments will

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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 and attached garage 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.

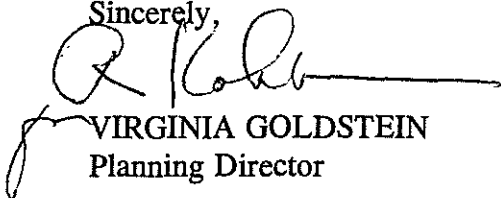
This variance request is approved, subject to the following conditions:

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. If applicable, approval from the Board of Appeals for all Building Code Violations will be obtained.
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.

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\65009036\ vdean.app

xc: West Hawaii Office