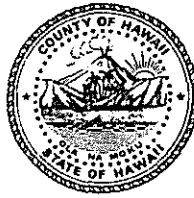


Stephen K. Yamashiro
Mayor



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 417 370 208

February 9, 1999

Mr. Robert D. Triantos
Carlsmith Ball
P.O. Box 1720
Kailua-Kona, Hawaii 96745-1720

Dear Mr. Triantos:

Variance Application WH(VAR 98-084)
Variance No. 987
Applicant: ROBERT D. TRIANTOS
Owner: RUTH FISCHER GORMAN
Request: Variance From Minimum Rear Yard and Open Space Requirements
Tax Map Key: 7-6-020: 077

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 4 to 12.9 feet rear yard in lieu of the minimum 15 feet rear yard as required by Chapter 25, Article 4, Section 25-124(a)(1)(A); an existing deck with a 3.2 to 9.5 feet rear yard open space and the existing roof eaves with a 1.3 to 9.4 feet rear yard open space in lieu of the minimum 10 feet open space as required by Chapter 25, Article 1, Division 10, Section 25-66(a) .

The subject property is located at Kilohana-Unit 1A Subdivision, Lot 77, North Kona, Hawaii, Tax Map Key: 7-6-020: 077.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property consists of 8,084 square feet of land area.

1. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 02902 opened on April 17, 1978 for the construction of a dwelling.
 - b. Building Permit No. 03207 opened on September 29, 1978 to install a solar heater.
 - c. Building Permit No. K04830 opened on March 3, 1981 and closed on May 24, 1983 to remove the overhang and deck.
 - d. Building Permit No. 895832 opened on July 11, 1989 and closed on January 25, 1990 for a 2-story garage with office, bedroom and bath.
2. A survey map prepared by KKM Surveys on November 24, 1998, includes an existing one story single family dwelling with a 4 to 12.9 feet rear yard in lieu of the minimum 15 feet rear yard. As such the dwelling encroaches 2 feet 1-1/4 inches to 11 feet into the required 15 feet rear yard.
 3. The survey map shows the existing deck with a 3.2 to 9.5 feet rear yard open space in lieu of the minimum 10 feet open space. As such the existing deck encroaches 6 inches to 6 feet 9-5/8 inches into the required 10 feet open space.
 4. The survey map shows the existing roof eaves with a 1.3 to 9.4 feet rear yard open space in lieu of the minimum 10 feet open space. As such the existing roof eaves encroach 7-1/4 inches to 8 feet 7-1/4 inches into the required 10 feet open space.
 5. When the building permit was approved, the owner received all of the necessary approvals for the dwelling from the Department of Public Works, Building Division.
 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 1978.
 7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1978 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 20 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which she had no

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control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.

9. The variance application was filed with the Planning Department on December 22, 1998.

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 her 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 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 encroaches 2 feet 1-1/4 inches to 11 feet into the required 15 feet rear yard, the existing deck encroaches 6 inches to 6 feet 9-5/8 inches into the required 10 feet open space and the existing roof eaves encroach 7-1/4 inches to 8 feet 7-1/4 inches into the required 10 feet open space. These encroachments into the 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 15 feet rear yard and 10 feet open space in this particular case, the encroachments will not visually or physically impact or be

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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.

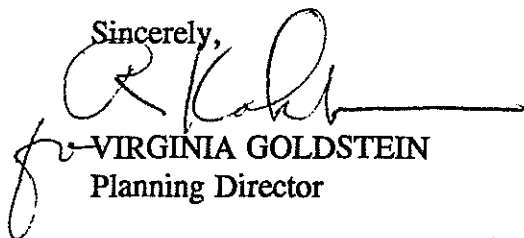
This variance request is approved, subject to the following conditions:

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 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. The applicant shall apply to and gain approval from the Department of Public Works, Building Division, for any unpermitted repairs to the dwelling.
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 Royden Yamasato of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office