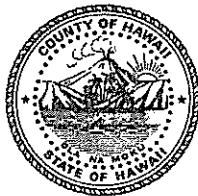


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

CERTIFIED MAIL

7099 3220 0000 4868 7672

**PLANNING DEPARTMENT**

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

May 10, 2000

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

Dear Mr. McIntosh:

Variance Application WH(VAR 00-019)  
Variance No. 1116  
Applicant: DONALD C. MCINTOSH  
Owners: SIDNEY KAIDE AND TERRY KAIDE  
Request: Variance From Minimum Rear Yard, Rear Yard Open Space, Side Yard and Side Yard Open Space Requirements  
Tax Map Key: 7-8-014:015

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After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing three story apartment building with a 18.44 to 18.66 feet rear yard in lieu of the minimum 20 feet rear yard, a 13.11 to 13.33 feet rear yard open space in lieu of the minimum 14 feet rear yard open space, a 11.17 to 11.28 feet side yard in lieu of the minimum 12 feet side yard and a 6.00 to 6.69 feet side yard open space in lieu of the minimum 7 feet side yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-96(1)(2) and Article 4, Division 4, Section 25-4-44(a), 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 Kahaluu Beach Lots, Lot 3, R.P. 4335, L.C. Aw. 6129 to Nauaimaka and R.P. 6856, L.C. Aw. 7713:6 to Kamamalu at Kahaluu, North Kona, Hawaii, Tax Map Key: 7-8-014:015.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,000 square feet of land area.
2. The subject apartment was issued the following building permits:
  - a. Building Permit No. 831521 opened on September 15, 1983 and closed on November 5, 1984 for a three story apartment.
  - b. Building Permit No. 851596 opened on August 30, 1985 and closed on September 10, 1985 to extend fiberglass roofing 3'6 in the front section only.
3. A survey map prepared by Don McIntosh Consulting on February 25, 2000 shows the three story apartment building with a 18.44 to 18.66 feet rear yard in lieu of the minimum 20 feet rear yard. As such, the apartment building encroaches 1 foot 4-1/8 inches to 1 foot 7-7/8 inches into the required 20 feet rear yard.
4. The survey map shows the three story apartment building with a 13.11 to 13.33 feet rear yard open space in the lieu of the minimum 14 feet rear yard open space. As such, the apartment building encroaches 8 inches to 10-3/4 inches into the required 14 feet rear yard open space.
5. The survey map shows the three story apartment building with a 11.17 to 11.28 feet side yard in lieu of the minimum 12 feet side yard. As such the apartment building encroaches 8-5/8 inches to 10 inches into the required 12 feet side yard.
6. The survey map show the three story apartment building with a 6.00 to 6.69 feet side yard open space in lieu of the minimum 7 feet side yard open space. As such the apartment building encroaches 3-3/4 inches to 12 inches into the required 7 feet side yard open space.
7. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1983 when the building 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.
9. It has been over 17 years since the construction of the existing building was approved by the County, and the applicant is trying to resolve a situation which they had no

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control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the building and improvements.

10. The variance application was filed with the Planning Department on February 28, 2000.

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 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 building 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. As such, the dwelling encroaches the apartment building encroaches 1 foot 4-1/8 inches to 1 foot 7-7/8 inches into the required 20 feet rear yard, 8 inches to 10-3/4 inches into the required 14 feet rear yard open space, 8-5/8 inches to 10 inches into the required 12 feet side yard and 3-3/4 inches to 12 inches into the required 7 feet side yard open space. These encroachments will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while Zoning Code requires a minimum 20 feet rear yard, 14 feet rear yard open space, 12 feet side yard and 7 feet side yard open space 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 building 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.

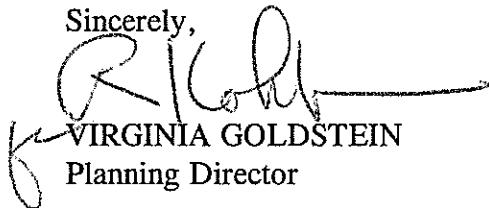
This variance request is approved, subject to the following conditions:

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

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xc: West Hawaii Office