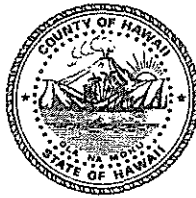


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL

7099 3220 0000 4868 7856

PLANNING DEPARTMENT

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

May 31, 2000

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

Dear Mr. McIntosh:

Variance Application WH(VAR 00-030)
Variance No. 1126
Applicant: DONALD C. MCINTOSH
Owner: GEORGE AND VILMA LINDO
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-3-046:152

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request an existing one story single family dwelling with a 18.87 feet side yard in lieu of the minimum 20 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-76(a)(1), Ordinance 97-88.

The subject property is located at Lot 39, Kona Acres Subdivision, Increment B, Ooma 1st, North Kona, Hawaii, Tax Map Key: 7-3-046:152.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 43,561 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
 - a. Building Permit No. 781715 opened on April 27, 1978 and closed on August 11, 1980 for a dwelling.
3. A survey map prepared by Donald C. McIntosh on April 7, 2000 shows the one story single family dwelling with 18.87 feet front yard in lieu of the minimum 20 feet side yard. As such, the dwelling encroaches 1 foot 5/8 inches into the required 20 feet side yard.

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4. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. 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.
6. It has been over 22 years since the construction of the existing 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.
7. The variance application was filed with the Planning Department on April 4, 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 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.

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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 1 foot 5/8 inches into the required 20 feet side yard. This encroachment 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 side 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 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. 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

EMM: rld

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xc: West Hawaii Office