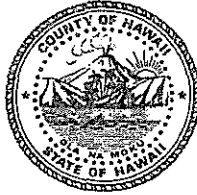


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL

7099 3220 0000 4868 7870

PLANNING DEPARTMENT

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

June 22, 2000

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

Dear Mr. Triantos:

Variance Application WH(VAR 00-32)

Variance No. 1129

Applicant: ROBERT D. TRIANTOS

Owner: PAUL HARTSOUGH AND ANDREA JONES HARTSOUGH

Request: Variance From Minimum Front Yard, Rear Yard, Side Yard and Open Space Requirements

Tax Map Key: 7-7-015:083, 085, and 087

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request for the following minimum front yard, rear yard, side yard and open space requirements:

- 1) **Parcel 83:** To allow an existing two story multiple family residential building with a rear yard of 19.8 feet in lieu of the minimum 20 feet rear yard; a roof eave having a rear yard open space of 11.8 feet in lieu of the minimum 14 feet rear yard open space; and a roof eave having a side yard open space of 1.7 feet in lieu of the minimum 5 feet side yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 3, Section 25-5-36(1)(2) and Chapter 25, Article 4, Division 4, Section 25-4-44(a);
- 2) **Parcel 85:** To allow an existing two story multiple family residential building with a side yard of 9.6 to 9.7 feet in lieu of the minimum 10 feet side yard; a roof eave with a side yard open space of 4.6 to 4.7 feet in lieu of the minimum 5 feet side yard open space; and an existing one story structure with a side yard of 9.3 to 9.4 feet in lieu of the minimum 10 feet side yard as required by

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Chapter 25, Article 5, Division 3, Section 25-5-36(2) and Chapter 25, Article 4, Division 4, Section 25-4-44(a).

- 3) **Parcel 87:** To allow an existing three story multiple family residential building with a 19.2 feet front yard in lieu of the minimum 20 feet front yard; a rear yard of 15.4 feet in lieu of the minimum 20 feet rear yard; a roof eave with a 9.3 feet rear yard open space in lieu of the minimum 14 feet rear yard open space; a side yard of 8.2 to 9.1 feet in lieu of the minimum 12 feet side yard; an existing one story shed structure with a 4.6 feet front yard in lieu of the minimum 20 feet front yard; and a roof eave with a 2.7 feet front yard open space in lieu of the minimum 14 feet front yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 3, Section 25-5-36(1)(2) and Chapter 25, Article 4, Division 4, Section 25-4-44(a).

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 in our Kona office. 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 Lots A, 76A and 79, Sea View Lots - Increment 1, File Plan 970, at Holualoa 4th, North Kona, Hawaii, Tax Map Key: 7-7-15:83, 85, and 87.

SPECIAL AND UNUSUAL CIRCUMSTANCES

PARCEL 83

1. The subject property consists of 7,500 square feet of land area.
2. The subject multiple family residential building was issued the following building permit:
 - a. Building Permit No. 51803 opened on April 4, 1972 and closed on January 8, 1973 for the construction of a 5-unit multiple family dwelling.
3. A survey map prepared by KKM Surveys on March 8, 2000 shows the multiple family dwelling with a rear yard of 19.8 feet in lieu of the minimum 20 feet rear yard. As such the dwelling encroaches 2-3/8 inches into the required 20 feet rear yard.
4. The survey shows the dwelling with a roof eave having a rear yard open space of 11.8 feet in lieu of the minimum 14 feet rear yard open. As such, the dwelling encroaches 2 feet 3/8 inches into the required 20 feet rear yard open space.

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5. The survey shows the dwelling with a roof eave having a side yard open space of 1.7 feet in lieu of the minimum 5 feet side yard open space. As such, the dwelling encroaches 3 feet 3-5/8 inches into the required 5 feet side yard open space.
6. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
7. 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 1972.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1972 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.
9. It has been over 28 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.
10. The variance application was filed with the Planning Department on February 17, 2000.

PARCEL 85

11. The subject property consists of 15,954 square feet of land area.
12. The subject multiple family residential building was issued the following building permit:
 - a. Building Permit No. 41316 opened on April 22, 1969 and closed on August 4, 1970 for the construction of a 10-unit multiple family dwelling.
 - b. There is no building permit for the one story building.
13. A survey map prepared by KKM Surveys on March 8, 2000 shows the multiple family dwelling with a side yard of 9.6 to 9.7 feet in lieu of the minimum 10 feet side yard. As such the dwelling encroaches 3/8 inches to 4-7/8 inches into the required 10 feet side yard.

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14. The survey shows a roof eave with a side yard open space of 4.6 to 4.7 feet in lieu of the minimum 5 feet side yard open space. As such, the dwelling encroaches 3-5/8 inches to 4-7/8 inches into the required 5 feet side yard open space.
15. The survey shows an existing one story structure with a side yard of 9.3 to 9.4 feet in lieu of the minimum 10 feet side yard. As such, the shed encroaches 7-1/4 inches to 8-3/8 inches into the required 10 feet side yard.
16. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
17. 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 1969.
18. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1969 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.
19. It has been over 31 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.
20. The variance application was filed with the Planning Department on February 17, 2000.

PARCEL 87

21. The subject property consists of 16,026 square feet of land area.
22. The subject multiple family residential building was issued the following building permit:
 - a. Building Permit No. 51793 opened on April 1, 1972 and closed on November 20, 1972 for the construction of a 10-unit multiple family dwelling.
 - b. There is no building permit for the shed.

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23. A survey map prepared by KKM Surveys on March 8, 2000 shows the multiple family dwelling with a 19.2 feet front yard in lieu of the minimum 20 feet front yard. As such, the dwelling encroaches 9-5/8 inches into the required 20 feet front yard.
24. The survey shows the dwelling with a rear yard of 15.4 feet in lieu of the minimum 20 feet rear yard. As such, the dwelling encroaches 4 feet 7-1/4 inches into the required 20 feet rear yard.
25. The survey shows the dwelling with a roof eave with a 9.3 feet rear yard open space in lieu of the minimum 14 feet rear yard open space. As such, the dwelling encroaches 4 feet 8-3/8 inches into the required 14 feet rear yard open space.
26. The survey shows the dwelling with a side yard of 8.2 to 9.1 feet in lieu of the minimum 12 feet side yard. As such, the dwelling encroaches 2 feet 10-7/8 inches to 3 feet 9-5/8 inches in the required 12 feet side yard.
27. The survey shows an existing one story shed structure with a 4.6 feet front yard in lieu of the minimum 20 feet front yard. As such, the shed encroaches 5 feet 4-7/8 inches into the required 20 feet front yard.
28. The survey shows an existing one story shed structure with a roof eave with a 2.7 feet front yard open space in lieu of the minimum 14 feet front yard open space. As such, the shed encroaches 11 feet 3-5/8 inches in the required 14 feet front yard open space.
29. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
30. 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 1972.
31. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1972 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.
32. It has been over 28 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.

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33. The variance application was filed with the Planning Department on February 17, 2000.

There was one objection from an adjacent property owner concerned about the height and color of the multiple family dwellings and requested that the roofs be lowered and painted light grey blue or grey green color.

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 dwellings 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 located on Parcel 83 encroaches 2-3/8 inches into the required 20 feet rear yard, 2 feet 3/8 inches into the required 20 feet rear yard open space and 3 feet 3-5/8 inches into the required 5 feet side yard open space.

The dwelling located on Parcel 85 encroaches 3/8 inches to 4-7/8 inches into the required 10 feet side yard, 3-5/8 inches to 4-7/8 inches into the required 5 feet side yard open space. The existing one story structure encroaches 7-1/4 inches to 8-3/8 inches into the required 10 feet side yard.

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The dwelling located on Parcel 87 encroaches 9-5/8 inches into the required 20 feet front yard, 4 feet 7-1/4 inches into the required 20 feet rear yard, 4 feet 8-3/8 inches into the required 14 feet rear yard open space, 2 feet 10-7/8 inches to 3 feet 9-5/8 inches in the required 12 feet side yard. The shed encroaches 5 feet 4-7/8 inches into the required 20 feet front yard and 11 feet 3-5/8 inches in the required 14 feet front yard open space.

These encroachments into the front yard, rear yard and open spaces 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 20 feet front yard, 20 feet rear yard, 14 feet front yard open space, 14 feet rear yard open space and 5 feet side yard open space in this particular case, the encroachments 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 dwellings comply 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 comply with the requirements of the Department of Public Works requirements and finalize electrical permits and projections less than 3'0".
4. The applicant shall obtain a building permit for the one story building located on Parcel 85 and the shed located on Parcel 87.

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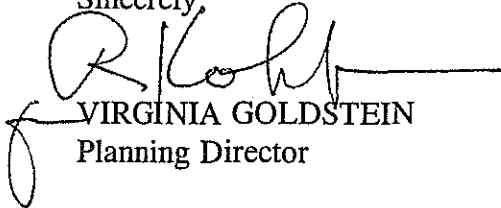
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5. All other applicable State and County rules and regulations shall be complied with.

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 at 327-3510.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office