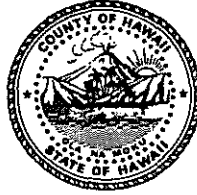


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

CERTIFIED MAIL

7099 3220 0000 4868 8273

August 24, 2000

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

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

Dear Mr. Triantos:

Variance Application WH(VAR 00-050)
Variance No. 1148
Applicant: ROBERT D. TRIANTOS, ESQ.
Owner: KENNETH E. SR. & BARBARA A. DEMBLEWSKI, TRUSTEES, 1998
INTER VIVOS TRUST AGREEMENT DATED JULY 2, 1998
Request: Variance From Minimum Side Yard and Open Space Requirements
Tax Map Key: 7-5-022:037

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 multiple family residential building with a laundry room with a 2.7 feet side yard in lieu of the minimum 10 feet side yard, a laundry room roof eave with a 2.7 feet side yard open space in lieu of the minimum 5 feet side yard open space; and a open stairway and deck with a 2.1 to 2.2 feet side yard open space 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(2) and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88

The subject property is located at Lot 83, Being a portion of R.P. Grant 3148, Apana 4 to W.P. Leleiohoku, at Honuaula, Kailua, North Kona, Tax Map Key: 7-5-022:037.

SPECIAL AND UNUSUAL CIRCUMSTANCES

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. 56381 opened on June 6, 1973 and closed on

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March 4, 1974 for 7-unit multiple family residential building with certificate of occupancy No. 74-382.

3. A survey map prepared by KKM Surveys on May 12, 2000 shows the existing two story multiple family residential building with a laundry room with a 2.7 feet side yard in lieu of the minimum 10 feet side yard. As such, the building encroaches 7 feet 3-5/8 inches into the required 10 feet side yard.
4. The survey map shows the laundry room roof eave with a 2.7 feet side yard open space in lieu of the minimum 5 feet side yard open space. As such the laundry room roof eave encroaches 2 feet 3-5/8 inches into the required 5 feet side yard open space.
5. The survey map shows the open stairway and deck with a 2.1 to 2.2 feet side yard open space in lieu of the minimum 5 feet side yard open space. As such the open stairway and deck encroaches 2 feet 9-5/8 inches to 2 feet 10-7/8 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 multiple family residential building.
7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1973 when the building was constructed. There also appears to have been a 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 27 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 control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the building and improvements.
9. The variance application was filed with the Planning Department on June 16, 2000.

There were no letters of objection 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

10. 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.
11. 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 building encroaches 7 feet 3-5/8 inches into the required 10 feet side yard. The laundry room roof eave encroaches 2 feet 3-5/8 inches in the required 5 feet side yard open space and the open stairway and deck encroaches 2 feet 9-5/8 inches to 2 feet 10-7/8 inches into the required 5 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 10 feet side yard 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 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.

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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 comply with the requirements of the Department of Public Works, Building Division.
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.

Please be informed that the approval of this variance does not relieve the landowner from complying with the requirements of other government agencies, including those of the Department of Public Works.

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