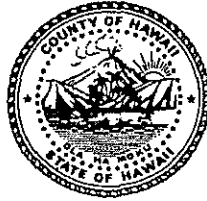


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
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

7000 0600 0024 2904 8604

February 12, 2001

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

Dear Mr. Triantos:

Variance Application WH(VAR 00-076)
Variance No. 1182
Applicant: ROBERT D. TRIANTOS, ESQ., CARLSMITH BALL LLP
Owners: EDWARD F. & MARY L. MACHLAN, MARGARET CHATFIELD
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-3-041:014

After reviewing your application and the additional information submitted on its behalf, the Planning Director certifies the approval of your variance request to allow an existing one-story single family dwelling with an 8.24 to 9.96 feet side yard and a 9.93 feet side yard in lieu of the minimum 10 feet side yard as required by Ordinance No. 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B), Ordinance 97-88.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. As confirmed with Mr. Royden Yamasato of your staff, you have agreed to an extension of time to February 28, 2001, for a decision to be rendered by the Planning Director on the subject variance application.

The subject property is located at Kona Palisade Subdivision, Unit 3, Lot 119, File Plan 1146 at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-041:014.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,462 square feet of land area.
2. The subject property was issued the following building permits:
 - a. Building Permit No. K08109 was issued on March 23, 1987, for the construction of a one-story single family dwelling containing 3 bedrooms, 2 bathrooms, kitchen, living/ dining, utility/storage and garage. This structure passed final inspection and the permit was closed on July 8, 1987.
 - b. Building Permit No. 905968 was issued July 17, 1990, for a 528 square foot garage. This permit remains open.
 - c. Building Permit No. 906103 was issued on August 14, 1990, for the installation of a half bath in an existing garage. This addition passed final inspection and the permit was closed on October 1, 1990.
 - d. Building Permit No. 906184 was issued on September 4, 1990, to convert an existing garage into a 498 square foot guest house by adding interior walls only. This permit remains open.
3. A survey map prepared by Donald C. McIntosh dated August 25, 2000, shows the westerly side of the dwelling to be 8.24 to 9.96 feet from the westerly side lot line. As such, the dwelling encroaches ½ inch to 1 foot, 9-1/8 inches into the minimum required 10 feet side yard. It is noted, however, that only a four-foot section of the westerly side of the dwelling encroaches 1 foot-9 1/8 inches into the side yard; the remaining portion of the westerly side of the dwelling encroaches ½ inch to ¾ inch into the side yard.
4. The survey map shows the northeast corner of the dwelling to be 9.93 feet from the easterly side lot line. As such, the northeast corner encroaches 7/8 inch into the minimum required 10 feet side yard.
5. When the building permit for the single-family dwelling was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling. The other structures on the property that have not passed final inspection did not necessitate the subject variance application.
6. When approved by the Planning Department, the plans would have had to shown that all minimum required setbacks were going to be adhered to for the dwelling in 1987.

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7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1987 when the dwelling was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachments. No other evidence has been found to show otherwise.
8. It has been over 13 years since the construction of the existing dwelling was approved by the County, and the owners are trying to resolve a situation over which they had no control and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.
9. The variance application was filed with the Planning Department on September 13, 2000.
10. The County Department of Public Works, Engineering Division, memorandum dated October 16, 2000, states:

"We have reviewed the subject application and offer the following comment:

"Please refer to the attached Building Division comments dated October 11, 2000.

"If you have questions please contact Kiran Emler of our Kona office at 327-3530."
11. The County Department of Public Works, Building Division, memorandum dated October 11, 2000, states:

"We oppose the approval of the application for the reasons noted below.

"Permits 905968 and 906184 for the subject dwelling were never finalized."
12. The State Department of Health memorandum dated October 6, 2000, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems need to be maintained."

No objections to the subject variance application have been received from surrounding property owners or leasees of record, or from the general public.

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.

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ALTERNATIVES

1. The owners of 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 encroachment to occur.
2. Any architectural alterations or design changes to the dwelling to conform to 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 owner 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. The westerly side of the dwelling encroaches $\frac{1}{2}$ inch to 1 foot-9 $\frac{1}{8}$ inches into the minimum required 10 feet side yard. It is noted, however, that only a four-foot section of the westerly side of the dwelling encroaches 1 foot-9 $\frac{1}{8}$ inches into the side yard; the remaining portion of the westerly side of the dwelling encroaches only $\frac{1}{2}$ inch to $\frac{3}{4}$ inch into the side yard. The northeast corner of the dwelling encroaches only $\frac{7}{8}$ inch into the minimum required 10 feet side yard. As such, these encroachments do not significantly compromise the intent and purpose of the Zoning Code to provide for adequate air and light circulation.

Therefore, while the Zoning Code requires a minimum 10 feet side yard 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 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.

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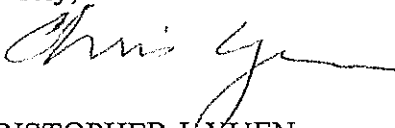
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2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. The owner shall secure final inspection approval for Building Permit Nos. 905968 and 906184 from 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.

Should you have any questions, please feel free to contact Pamela Harlow of my staff at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

PLH: plh

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xc: West Hawaii Office