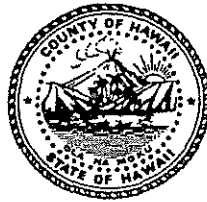


Harry Kim
Mayor



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

7000-0600-0024-2904-8598

February 7, 2001

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

Dear Mr. Triantos:

Variance Application WH(VAR 00-098)

Variance No. 1180

Applicant: Robert D. Triantos, Esq, Carlsmith Ball, LLP

Owner: Mark G. and Melanie M. McKinney

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

Tax Map Key: 7-3-032: 018; Kona Palisade Subdivision, Kalaoa 5th, North Kona, Hawaii

After reviewing your application and the information submitted, the Planning Director certifies the approval of this variance to allow an existing two story single family dwelling with a front yard open space of 11.3 to 11.5 feet in lieu of the minimum 14 feet side yard open space requirement; and a detached garage with a 9.7 feet side yard setback in lieu of the minimum 10 feet side yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B), Ordinance 97-88 and 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. Your patience is appreciated.

The subject property is located at lot 173, Kona Palisade Subdivision-Unit 1, File Plan 1061, Grant 2972 at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-032: 018.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,220 square feet of land area.

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2. The subject single family dwelling and detached garage were issued the following building permits:
 - a. Building Permit No. H50581 issued on December 9, 1971.
 - b. Building Permit No. 906482 issued on November 7, 1990 for the enclosure and addition at master bedroom located over an existing deck.
 - c. Building Permit No. 915708 issued on June 6, 1991 to allow the removal of walls to enlarge the living and dining rooms and to allow the construction of decks around the dwelling.
 - d. Building Permit No. 975921 issued on October 31, 1997 to allow the extension of the existing roof. This permit was never finalized by the applicant.
 - e. Building Permit No. 006128 issued on August 16, 2000 to allow the removal of part of the existing deck in order to comply with yard setback requirements.
3. A survey map prepared by KKM Surveys on November 15, 2000 shows the two story single family dwelling with a front yard open space ranging from 11.3 to 11.5 feet in lieu of the minimum 14 feet front yard open space as required by the Zoning Code. As such, the open deck and roof encroaches a maximum of 2.7 feet into the required 14 feet front yard open space.
4. The survey map shows a detached garage with a 9.70-foot side yard setback in lieu of the minimum 10 feet side yard setback. As such, the dwelling encroaches 0.3 foot (3.6 inches) into the required 10 feet side yard setback.
5. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and detached garage.
6. There appears to have been a relatively minor siting error in the siting of the structure on the property. This probably occurred in 1971 when the dwelling and garage were originally constructed or in subsequent years with the construction of various improvements to the existing dwelling. No other evidence has been found to show otherwise as demonstrated by the proper issuance of a number of building permits for the construction of the dwelling and its various improvements.

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7. It has been approximately 29 years since the construction of the existing dwelling and garage were approved by the County, and the applicants are 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. While additional improvements were constructed over the years, building permits for these improvements were secured by the landowners.
8. The variance application was filed with the Planning Department on November 17, 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 that 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

3. The owners, on their own volition, are honestly trying to resolve this 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.
4. Any structural changes to the dwelling and garage to conform with the minimum setbacks and yard open space requirements will create an undue and excessive hardship for the applicants 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 ensure that adequate air and light circulation is available between structures and property lines. The roof and deck of the existing single family dwelling encroaches a maximum of 2.7 feet into the required 14 feet front yard open space and the existing garage extends 0.3 foot into the required 10 feet side yard setback. These relatively minor encroachments into the front yard open space and side yard setback 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 14 feet front yard open space and a 10 feet side yard setback in this particular case, these encroachments

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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 and detached garage complies with the minimum yard setback and open space requirements of the Zoning Code.

Based on the foregoing findings, granting of 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. Building Permit Number 975921 shall be finalized with 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 Daryn Arai of our West Hawaii Office at 327-3510.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

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c: West Hawaii Office