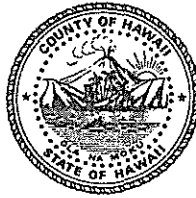


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
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
Z 328 993 230

January 24, 2000

Mr. Richard R. Tozer
77-6566 Alii Drive
Kailua-Kona, Hawaii 96740

Dear Mr. Tozer:

Variance Application WH(VAR 99-100)
Variance No. 1089
Applicant: RICHARD R. TOZER
Owners: RICHARD R. AND LORAIN TOZER
Request: Variance From Minimum Side Yard and Open Space Requirements
Tax Map Key: 7-7-010: 011

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow a proposed addition to an existing one story single family dwelling with a 3.2 feet side yard in lieu of the minimum 8 feet side yard and a 1.2 feet side yard open space in lieu of the minimum 4 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B) and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

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. 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 Lot 1, Being portions of R.P. 3736, L.C. Aw. 10,642 Ap. 1 to Puhi; and R.P. 4033, L.C. Aw. 2376, Ap. 2 to Keauikalima, at Kapalaalaea 1st, North Kona, Hawaii, Tax Map Key: 7-7-010: 011.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,700 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 13624 opened on May 5, 1953 and closed February 3, 1954 for the construction of a single family dwelling.
 - b. Building Permit No. 29373 opened on June 11, 1964 and closed on September 4, 1964 for repair of roof.
 - c. Building Permit No. 40419 opened on December 17, 1968 and closed on May 13, 1969 for repair of roof.
3. A site plan prepared by J. Langston Ewell on November 1, 1999 shows the one story single family dwelling with the proposed addition. The site plan also indicates that the open carport and a portion of the one story single family dwelling encroach within the minimum required 15 feet front yard setback requirement of Chapter 25.
4. The site plan shows the proposed addition with a 3.2 feet side yard in lieu of the minimum 8 feet side yard. As such, the proposed addition would encroach 4 feet 9-5/8 inches into the minimum 8 feet side yard.
5. The site plan shows the proposed addition with a 1.2 feet side yard open space in lieu of the minimum 4 feet open space. As such, the proposed addition would encroach 2 feet 9-5/8 inches into the minimum 4 feet open space.
6. The variance application was filed with the Planning Department on November 26, 1999.

The property is zoned Single-Family Residential (RS-7.5) and is triangular in shape. The subject property abuts the shoreline with a rock wall surrounding the parcel. Access to the property is off the old Kailua-Keauhou Beach Road which is adjacent to Alii Drive. The parcel is fully developed. The surrounding properties are zoned Single-Family Residential (RS-7.5).

The applicant states the following: "The purpose of the zoning variance request is to allow the Tozer family to expand their residence to their current needs. The goal is to add one bedroom and a walk in closet (14'- 0" x 20'- 0" approx) and allow space for an office/den. Due to the

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existing topography and rockwall (believed to be dated c1800's) there is only one logical way to add to accomplish their goals."

There were no objections from any member of the general public or adjacent property owners.

At the time the existing family dwelling was constructed in 1951, Ordinance No. 149, County of Hawaii, Territory of Hawaii was in effect. This ordinance provided the establishment of use zone districts. The setback requirements were pursuant to the Uniform Building Code. The Uniform Building Code required that for lots of less than 10,000 square feet, the minimum side yard setback was three (3) feet.

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 investigation of this particular matter reveals that construction of the proposed addition to the existing one story single family dwelling with a 3.2 feet side yard and 1.2 feet side yard open space will not diminish the ability for adequate light and air to circulate and will still provide adequate open space under the Chapter 25 of the Zoning Code.
2. Any other location for the proposed addition to conform with the minimum setbacks would create undue and excessive hardship for the applicant, or create a visual obstruction of the ocean view, 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 buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The proposed addition would encroach 4 feet 9-5/8 inches into the minimum 8 feet side yard and 2 feet 9-5/8 inches into the minimum 4 feet open space.

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These encroachments into the side yard and open space, 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 8 feet side yard and 4 feet 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.

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 requirements of the Department of Public Works, Building Division shall be maintained.
4. The applicant shall submit a certified survey map identifying property lines and all improvements including walls, to the Department of Public Works, Engineering Division.
5. All encroaches into the County right-of-way shall be removed.
6. 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.

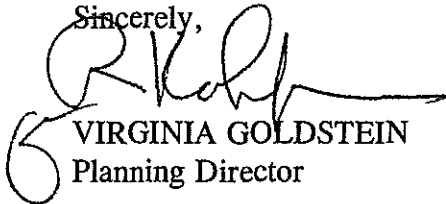
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Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office