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PLANNING DEPARTMENT

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June 6, 2018

Mr. & Mrs. Poerstel
73-4350 Ahiahi Street
Kailua-Kona, HI 96740

Dear Mr. & Mrs. Poerstel,

SUBJECT: Application: Variance - VAR 18-000473
Applicant: MR. RICHARD H. POERSTEL, JR.
MRS. LAYNE P. POERSTEL
Owners: MR. RICHARD H. POERSTEL, JR.
MRS. LAYNE P. POERSTEL
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirement (Encroachment into East Front Yard Setback
and open space)
Tax Map Key: (3) 7-3-032: 082

The Planning Director certifies the approval of Variance No. 17-000473, subject to variance conditions. The variance will allow portions of the dwelling entry wall and roof overhang to remain with a 18.7-foot wall setback in the 20'-0" front (east) yard setback. This exception is in lieu of the required 20-foot front yard setback, and 6.0' open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

Also a portion of the existing carport walls are within the 10 foot side yard and roof overhang projects 2.2 feet into the allowable 5 foot open space in the south side yard setback. The carport walls within the 10 foot (south) side yard and the portion of the existing carport roof that extends into the 5'-0" open space will be removed.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, TMK (3) 7-3-032: 082, contains approximately 10,996 square feet and is situated within the Kona Palisade Unit I Subdivision, North Kona, Hawai'i. The subject property's street address is 73-4350 Ahiahi Street, Kailua-Kona, HI 96704.

2. **County Zoning.** A-5a
3. **State Land Use Designation.** Urban
4. **Setback Requirements.** 20 feet front & rear with 14'-0" open space and 10 feet with 5'-0" open space for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 9, 2018. The variance application's survey map dated April 6, 2018 was prepared by Wes Thomas Associates and denotes that portions of the dwelling entry and roof are built into the front (East) yard setback and or open space. (See **Exhibit A-Site Plan Survey**)

The survey map dated April 9, 2018, shows the walls of the entry section of the dwelling at 18.7 feet from the front (east) property line which is encroaching 1.3 feet into the front yard setback, in lieu of the required 20-foot front yard setback. The survey map also shows carport walls within the 10 foot (south) side yard, one section of the carport roof at 2.8 feet from the side (south) property line resulting in a minimum 2.2-foot side (south) open space, in lieu of the required 5 foot open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (3210) was issued on October 2, 1978, for a single-family dwelling consisting of 4 Bedrooms and 2 1/2 Baths. The current homeowners did not build this building and were unaware of the violations when they purchased the dwelling.
7. **Agency Comments and Requirements.**
 - a. Comments dated May 2, 2018, from the State Department of Health (DOH), indicated that there are no environmental health concerns.
 - b. No comments were received from Department of Public Works - Building Division as of this date.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 10, 2018 and June 4, 2018 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 26, 2018.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. Planning received five (5) no objections from surrounding property owners and none from the general public were received.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

(a) There are special or unusual circumstances applying to the subject real 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 property.

The Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the unintentional encroachment of the dwelling's front entry which is located in the 20-foot (east) front yard setback as required by the Zoning Code.

The survey map dated April 6, 2018, shows a section of the dwelling entry wall encroaching into the front yard (east) setback a total of 1.3 feet' in lieu of the required 20-foot front yard setback.

A portion of the carport walls are within the 10 foot (south) yard and portion of the carport roof overhang encroach into the side yard (south) 5-0' required open space. This carport encroachment of roof and walls will be removed and no variance is requested for these violations.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in October 2, 1978, over 29 years ago. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and development of the subject property.

Alternatives

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front yard of the subject property include the following actions:

Demolishing the dwelling's entry and relocating of the entry 1.3 feet further away from the front yard property boundary and extending the bridge to the front door by the same amount would be unreasonable given the small adjustment needed. .

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The variance request 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. The dwelling has been in existence for approximately 29 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built on the subject property (TMK: 7-3-032: 082) will not meet the minimum front yard requirements or open space pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

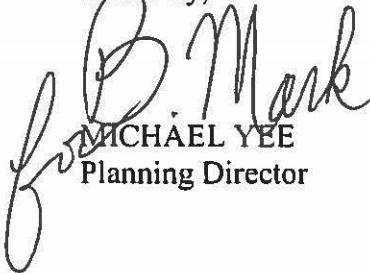
This variance application is approved subject to the following variance conditions:

1. The portion of the existing carport walls encroaching into the 10 foot side yard (south) and the portion of the carport roof encroaching into the side yard (south) 5'-0" required open space shall be removed.
2. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
3. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
4. Should the dwelling walls built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
5. Future or new building improvements and permitted uses shall be subject to State law and County Ordinances and Regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-18-000473.

Any questions may be directed to this office, attention Terry Dunlap at (808) 323-4770.

Sincerely,


MICHAEL YEE
Planning Director

Poerstel (Variance 18-000473) TMK 7-3-032: 082
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xc: Natalie Whitworth DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

Keith A. Winnie, Architects, INC.