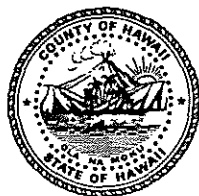


Stephen K. Yamashiro
Mayor



VAR 556
Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

December 17, 1993

Mr. Klaus D. Conventz
P.O. Box 2308
Kailua-Kona, Hawaii 96745

Dear Mr. Conventz:

Variance Application WH(VAR93-61)
Applicants: WILLIE M. & ETHA B. TUCKER
Variance from Minimum REAR YARD SETBACK Requirements
Tax Map Key: 7-7-19: 18

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow an EXISTING TWO STORY SINGLE FAMILY DWELLING with an 18.11 foot and 17.55 foot Rear Yard Setback and 12.55 foot open clearspace yard in lieu of the minimum 20 FOOT REAR YARD SETBACK and 14 FOOT OPEN CLEARSPACE YARD as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (a)(2) (Minimum yards) and SECTION 25-66 (Projections into required yards and open spaces) (a)(1) of the Zoning Code (Chapter 25).

The subject property is located on the north side of Mele Place approximately 180 feet east of the Mele Place/Ainanani Street intersection in the Kuakini Heights Subdivision, Unit II, Laaloa, North Kona, Hawaii, TMK: 7-7-19: 018.

The Planning Director has concluded that the variance request from the MINIMUM REAR YARD SETBACK requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kuakini Heights Unit II Subdivision consisting of 11,347 square feet of land area.

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2. The subject single family dwelling was issued Building Permit No. 473 on January 1, 1974. A building permit #2649 for a deck addition was issued on November 7, 1977 and a building permit #06558 for a carport was issued on October 31, 1993 and subsequently voided.
3. A survey map dated October 11, 1993 prepared and certified by Don McIntosh shows the existing dwelling with an 18.11 foot and 17.55 foot Rear Yard Setback and 12.55 foot open clearspace yard. As such, the subject dwelling encroaches into the rear yard setback at the BACK OF THE DWELLING BY 1 foot - 11 and 7/8 inches and 2 feet - 5 and 3/8 inches. The overhang encroaches into the Open Clearspace yard by 1 foot - 5 and 3/8 inches.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1974.
6. It appears that a construction staking error occurred in 1974 when the dwelling was constructed in the siting of the structure on the property. It also appears that a very minor siting error was done at the time of construction with the 1 foot - 11 and 7/8 inches and 2 feet - 5 and 3/8 inches. The overhang encroaches into the Open Clearspace yard by 1 foot - 5 and 3/8 inches. No other evidence has been found to show otherwise.
7. It has been over 19 years since the construction of the existing dwelling which was approved by the County and the petitioner is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.

Therefore, considering the foregoing facts, it is 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 subject property is trapezoidal shaped parcel.
2. The present encroachments of 1 foot - 11 and 7/8 inches and 2 feet - 5 and 3/8 inches and roof overhang encroachment of 1 foot - 5 and 3/8 inches into the rear yard property line are minuscule in relationship to the minimum required 20 foot rear yard setback. These minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the rear yard.
3. The applicants 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 shown any deliberate or intentional grounds in allowing the encroachments to occur.
4. Any architectural alterations or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardships of the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

1. 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 existing dwelling on the subject property is presently situated 18.11 and 17.55 feet away from the rear yard property line. In addition, only the northwest corner of the dwelling is the portion encroaching into the rear yard setback. As such, this corner building encroachment is so minuscule and is not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the vacant property to the north. Therefore, while the Zoning Code requires a minimum 20 foot rear yard setback, in this particular case, the encroachments are so minuscule that it 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 setbacks requirements of the Zoning Code.

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There were no objections from any of the participating government agencies. There were also no objections from any surrounding property owners to the proposed variance request.

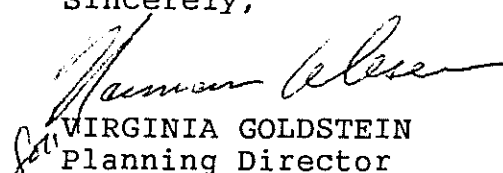
Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, its 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 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.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office