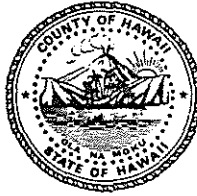


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

VAR 594

County of Hawaii

PLANNING DEPARTMENT

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

COPY

CERTIFIED MAIL

May 12, 1994

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

Dear Mr. Conventz:

Variance Application WH(VAR94-24)
Applicants: GEORGE & CYNTHIA HENSHAW
Variance from Minimum Sideyard & Rearyard Setback Requirements
Tax Map Key: 7-3-39: 70

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 ABOVE GRADE DECK with a 4.24 foot open clear space side yard setback in lieu of the minimum 5 FOOT OPEN CLEAR SPACE YARD SIDE YARD SETBACK; The existing single family dwelling with a 19.12 front yard setback in lieu of the minimum 20 FOOT FRONT YARD SETBACK; and an open carport attached to the dwelling with a 12.5 foot open clearspace yard in lieu of the minimum 14 foot open clearspace yard as required by Chapter 25 (Zoning Code), Article 18 (UNPLANNED), Section 25-237 (b) (Other regulations)(b) and Article 1 (General Provisions), Division 10 (Yard and Open Space Regulations), Section 25-66 (a)(1).

The subject property is located at the end and on the northwest side of Waikane Place Cul-de-Sac in the Kona Palisades Subdivision, Unit III, Kalaoa 5th, North Kona, Hawaii.

The Planning Director has concluded that the variance request from the minimum front and side yard setback requirements should be approved, based on the following findings:

PROPOSED REQUEST

1. The subject property is part of the Kona Palisades Subdivision, Unit III Subdivision consisting of 10,000 square feet of land area.
2. The subject single family dwelling and carport was issued Building Permit No. 07368 on March 13, 1986 and closed on May 29, 1986. The Building Permit for the swimming pool was issued on June 4, 1986 and closed on August 20, 1986.

3. In 1986, the Planning Department made a determination that the west property line was determined to be the REAR YARD for the subject property.
4. The Department of Public Works, Building Division has determined that the swimming pool and deck are not attached to the dwelling and therefore are accessory to the dwelling structure.
5. With the Department of Public Works determination that the swimming pool and deck is not structurally attached to the dwelling, it is considered an "accessory structure" under the Zoning Code. The Zoning Code does not require a rear yard setback for "Accessory Structures.", therefore, a rear yard setback variance for the swimming pool and deck is not required in this particular case. However, the deck requires a minimum 5 foot open clearspace yard for open projections.
6. A survey map dated February 11, 1994 was prepared and certified by Donald McIntosh shows the existing dwelling with a 19.12 front yard setback; an open carport with a 12.5 foot open clearspace yard and a swimming pool deck with a 4.24 foot open clearspace yard. As such, the subject dwelling and open carport encroaches into the front yard setback by 9 and 5/8 inches and 1.5 feet respectively. The swimming pool deck encroaches into the open clearspace yard by 7 and 3/4 inches.
7. The homeowners at that time received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
8. 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 1986.
9. The variance application was filed with the Planning Department on FEBRUARY 18, 1994.

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 swimming pool deck, dwelling and open carport encroachments of 7 and 3/4 inches, 9 and 5/8 inches and 1.5 feet respectively are minuscule in relationship to the minimum required 5 feet open clearspace yard, 20 foot front yard setback and 14 foot open clearspace front yard. These minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the front and side yards.
2. The applicant on his own volition is honestly trying to resolve this long standing problem which was not intentionally created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
3. 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. In addition, it appears that government contributed in the confusion as to the required yards and setback requirements which created the present situation.

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 19.12 feet from the front property line. The existing carport is situated 12.5 feet from the front property line and the swimming pool deck is situated 4.24 feet from the south side property. The subject property is approximately 8 to 10 feet higher than the elevation at which the dwelling to the west is located. The height of the structure where the deck encroaches is approximately 8 feet above the ground level of the property to the west. The property to the south is vacant and is proposed for a residential development. The 4.24 open clearspace yard for the deck is only .64 feet or 7 3/4 inches from the south side property line. In addition, the swimming pool and deck is considered an

accessory structure and not required to provide a rear yard setback. Therefore, the encroachments to the south side and front property line are so minuscule and are not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the swimming pool deck and the south front and side property lines. However, to further mitigation the visual aspect of the swimming pool deck to these adjacent properties, a landscaping screen condition is being required and to be included in the deed of the property to ensure its existence.

Therefore, while the Zoning Code requires a minimum 20 foot front and 10 foot side yard setbacks with 5 foot open clearspace yards, in this particular case, the front and side yard setbacks encroachments are minuscule in nature 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.

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:

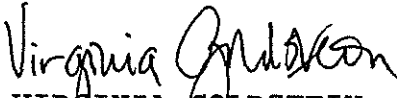
1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The petitioner shall provide a landscaping screen along the entire length of the south side and west rear property line to assist in the visual mitigation of the swimming pool deck to the adjacent properties to the west and south. This landscaping screen shall be of a hedge type system and be a minimum of 6 feet in height and shall be properly maintained to ensure its existence. This landscaping installation and maintenance requirement shall be made a covenant in the deed of the property and shall be included in the conveyance document required in condition no. 3.

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3. 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.
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.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

RHY:rld
0929Q

xc: DPW, Building, Kona Office
West Hawaii Office