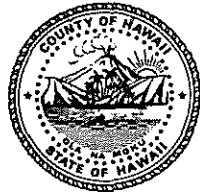


VAR 641



Stephen K. Yamashiro
Mayor

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

CERTIFIED MAIL

April 4, 1995

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

Dear Mr. Conventz:

Variance Application WH(VAR95-11)
Variance No. 641
Landowner: ERIC RELLIS FAMILY TRUST
Consultant: Klaus Conventz
Variance from Minimum REAR YARD SETBACK Requirements
Tax Map Key: 7-7-012: 034

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your request Variance No. 641 to allow an EXISTING SINGLE FAMILY DWELLING with an attached above grade swimming pool/deck having a 8 foot rear yard setback and 2.8 foot open clearspace yard in lieu of the minimum 20 FOOT REAR YARD, 14 FOOT OPEN CLEARSPACE YARD as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential Districts), SECTION 25-124 (Minimum yards)(a)(2)(A).

The subject property is located on the east side of Kilohana Street approximately 300 feet east of the Sunset Drive/Kilohana Street intersection in the Sunset View Terrace Subdivision, Unit II, North Kona, Hawaii, TMK: 7-7-012: 034.

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 Sunset View Terrace Subdivision, Unit II consisting of 10,000 square feet of land area.

APR 20 1995
04847

Mr. Klaus Conventz
Page 2
April 4, 1995

2. The subject single family dwelling was issued Building Permit No. 34790 on November 22, 1966.
3. The swimming pool was issued under Building Permit No. 1455 on September 1, 1975.
4. A survey map prepared by Klaus Conventz shows the EXISTING SINGLE FAMILY DWELLING with an attached above grade swimming pool/deck having a 8 foot rear yard setback and 2.8 foot open clearspace yard. As such, the subject swimming pool encroaches into the rear yard by 12 feet and the deck into the open clearspace yard by 11.2 feet.
5. The site plan submitted also shows the existing dwelling encroaching into the adjacent property to the north. This parcel TMK: 7-7-012: 033 is also owned by the Landowner of parcel 34. A consolidation map (CON 95-05) has been submitted for the consolidation of parcels 33 and 34 to resolve the encroachments between parcel 33 and 34. Final consolidation approval still has not been granted.
6. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the swimming pool/deck.
7. 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 existing swimming pool/deck addition in 1975.
8. It appears that a communication error occurred in 1975 when the swimming pool/deck was constructed in the siting of the structure on the property. There are no plans to verify what was actually approved in 1975. However, if the deck was not attached to the dwelling, the pool/deck addition would have been considered to be an accessory structure and would not have been required to provide a rear yard setback by the Zoning Code. In addition, only approximately 4 feet of the deck is attached to the dwelling, which makes it part of the single family dwelling. No other evidence has been found to show otherwise.
9. It has been over 20 years since the construction of the existing swimming pool/deck 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.

10. The variance application was filed with the Planning Department on FEBRUARY 14, 1995.

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 an interior lot and rectangular in shape.
2. The present encroachment of the swimming pool of 12 feet and the deck encroachment of 11.2 feet would have been acceptable by the Zoning Code if the swimming pool/deck addition was detached from the dwelling. As such, were it not for the 4 foot deck attachment, a variance from the rear yard setback requirements would not have required.
3. The applicant 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.
2. The existing swimming pool/deck on the subject property is presently situated 12 feet and 2.8 feet respectively from the rear property line. Therefore, the subject swimming pool encroaches into the rear yard setback by 8 feet and the deck by 11.2 feet.

3. These encroachments would not have been required were it not for the minor 4 feet of deck which is attached to the dwelling.
4. As such, since the attachment is so minor and could have reasonably been considered as an accessory structure, the light and air circulation requirements for accessory structures is in spirit being complied with.
5. In addition, there is a existing concrete wall between the rear property line and the adjacent parcel to the west. Therefore, while the Zoning Code requires a minimum 20 foot rear yard setback with a 14 foot open clearspace yard, in this particular case, the encroachments would have met with the minimum setback requirements for an accessory structure. Therefore, the granting of the variance 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 will be brought into compliance with the minimum yard setbacks requirements of the Zoning Code. Also, there were no objections from any of the participating government agencies or any surrounding property owners.

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. Final Consolidation Approval of the subject parcels shall be secured prior to submittal of any building permits.

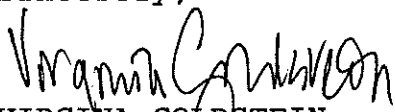
Mr. Klaus Conventz
Page 5
April 4, 1995

4. The applicant shall prepare and submit the necessary plans for a building permit for all alterations and improvements to be made within 1 year from the date of Final Consolidation approval.
5. The applicant secure a variance from the Board of Appeals for the Housing Code setback requirements, if necessary.
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.

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,


VIRGINA GOLDSTEIN
Planning Director

RHY:rld
1267Q

xc: West Hawaii Office
Department of Public Works, Building Division