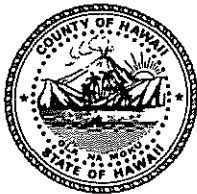


Stephen K. Yamashiro
Mayor



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

June 5, 1995

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

Dear Mr. Conventz:

VARIANCE NO. 659
Variance Application WH(VAR95-29)
Applicant: MORGAN/SCHLEICHER TRUST
Consultant: KLAUS CONVENTZ
Variance from Minimum SIDE YARD SETBACK Requirements
Tax Map Key: 6-8-024: 004

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of variance request No. 659 to allow an existing one story single family dwelling with a 16.6 foot to 18.6 foot front yard setback with 11.1 to 13.4 foot open clearspace yard in lieu of the minimum 20 foot front yard setback and 14 foot open clearspace yard as required by Chapter 25 (Zoning Code), Article 6 (Multiple Family Residential), SECTION 25-140(a)(1)(Minimum Yards) and Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations), SECTION 25-66 (a)(Projections into required yards and open spaces).

The subject property is located on the north side of Mauna Lani Point Drive approximately 570 feet west of the Mauna Lani Point Drive/Kaniku Drive intersection in the Mauna Lani Cape Subdivision, South Kohala, Hawaii, TMK: 6-8-024: 004.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Mauna Lani Cape Subdivision consisting of 18,383 square feet of land area.

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2. The subject single family dwelling was issued Building Permit No. 905468 on March 23, 1990 and April 23, 1991.
3. The swimming pool was issued under Building Permit No. 905843 on June 14, 1990.
4. A survey map prepared by Cassera Surveys shows the EXISTING SINGLE FAMILY DWELLING with a 16.6 foot to 18.6 foot front yard setback with 11.1 to 13.4 foot open clearspace yard. As such, the subject single family dwelling encroaches into the front yard by 1.4 to 3.4 feet and the roof overhang encroaches into the open space yard by 2.9 to 0.6 feet.
5. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the single family dwelling.
6. 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 single family dwelling in 1991.
7. It has been over 4 years since the construction of the existing single family dwelling was approved by the County and the petitioner is trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.
8. The variance application was filed with the Planning Department on APRIL 17, 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 trapezoidal in shape.
2. The subject single family dwelling encroaches into the front yard by 1.4 to 3.4 feet and the roof overhang encroaches into the open space yard by 2.9 to 0.6 feet.

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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.
The present dwelling encroachments into the front yard setback by 1.4 to 3.4 feet and the roof overhang encroachments into the open space yard by 2.9 to 0.6 feet are minor relative to their adjacency to the street. As such, the existing setbacks still afford the availability of light, air and physical circulation although not to the minimum standards. Additionally, the encroachments will not diminish the ability for adequate light, air and open space between the existing dwelling and the adjacent properties. 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. 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 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.

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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.

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

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

RHY:rld
1353Q

xc: West Hawaii Office