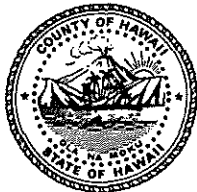


Stephen K. Yamashiro  
Mayor



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

JUN 21 1995

#### CERTIFIED MAIL

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

Dear Mr. Conventz:

VARIANCE NO. 661  
Variance Application WH(VAR95-28)  
Applicant: JAMES FAMILY TRUST  
Consultant: KLAUS CONVENTZ  
Variance from Minimum SIDE YARD SETBACK Requirements  
Tax Map Key: 7-3-032: 011

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your VARIANCE NO. 661 to allow an existing two story single family dwelling with a 8.14 foot to 8.19 foot side yard setback in lieu of the minimum 10 foot side yard setback as required by Chapter 25 (Zoning Code), Article 18 (Unplanned), SECTION 25-237 (b)(Other regulations).

The subject property is located on the north side of Awakea Street approximately 180 feet east of the Ahu Ahu Street/Awakea Street intersection in the Kona Palisades Subdivision, Unit I, North Kona, Hawaii, TMK: 7-3-032: 011.

However, there was one letter submitted in objection to the granting of this variance request. In accordance with the provisions of Section 25-27.0 of the Zoning Code, each person who qualifies as an "Interested Party" may request a review of the director's action on the variance application within ten days from the date of receipt of their being notified of the Planning Director's approval of your request.

Therefore, if a request for review is made by an "Interested Party", that request must be evaluated and presented to the County of Hawaii Planning Commission for its disposition. As such, the final approval of the variance will be effective on the above date, if no appeal of the Planning Director's approval decision is received by our office.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kona Palisades Subdivision, Unit I consisting of 10,585 square feet.
2. The subject single family dwelling was issued Building Permit No. 07852 on November 20, 1986 and closed on June 22, 1987. A building permit #935266 was issued for an enclosed lanai on March 17, 1993 and closed on April 26, 1995. A building permit #955322 was issued for a bathroom, bar sink and lanai addition on April 17, 1995 and closed on April 26, 1995.
3. A survey map prepared on March 23, 1995 by Cassera Surveys shows the existing single family dwelling with a 8.14 to 8.19 foot side yard setback. The portion of the single family dwelling which encroaches into the side yard setback is for a cantilever portion of second story bathroom approximately 9 feet in length. As such, the encroachment area is approximately 18 square feet in area. Therefore, the subject dwelling encroaches into the side yard setback by 1.86 to 1.81 feet.
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 1986.
6. It appears that a construction staking error occurred in 1986 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 minuscule encroachments. No other evidence has been found to show otherwise.
7. It has been over 9 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.

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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 rectangular in shape.
2. The portion of the single family dwelling which encroaches into the side yard setback is for a cantilever portion of second story bathroom approximately 9 feet in length. As such, the encroachment area is approximately 18 square feet in area. Therefore, the subject dwelling encroaches into the side yard setback by 1.86 to 1.81 feet. The present encroachment into the side yard setback is relatively minor in relationship to the minimum required 10 foot open clearspace yard side yard setback requirements. This minor encroachment is not perceptibly visible that it could be readily detected or seen as an encroachment into the side yard.
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.

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2. The only portion of the single family dwelling which encroaches into the side yard setback is for a cantilever portion of second story bathroom approximately 9 feet in length. As such, the encroachment area is approximately 18 square feet in area. Therefore, the subject dwelling encroaches into the side yard setback by 1.86 to 1.81 feet. The rest of the dwelling complies with all setback requirements. This encroachment is also only for a minor portion of the two story dwelling.
3. This encroachment into the side yard setback is so minor and is not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the adjacent dwelling.
4. Therefore, while the Zoning Code requires a minimum 10 foot open clearspace side yard setback, in this particular case, the encroachment is so minor 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.
5. There was one objection from a surrounding property owner but no objections from any government agencies.

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. The applicant secure a variance from the Board of Appeals for the Housing Code setback requirements.

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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.

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

Sincerely,

*Rodney K. Nakano*

VIRGINA GOLDSTEIN  
Planning Director

RHY:rld  
1363Q

Enclosure

xc: West Hawaii Office