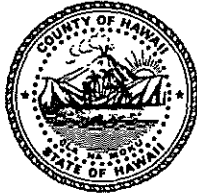


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

CERTIFIED MAIL

## County of Hawaii

### PLANNING DEPARTMENT

AUG 1 0 1995

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

PD Var.676

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

Dear Mr Conventz:

Variance Application WH(VAR95-44)  
Applicant: Hidenobu Akutsu  
Variance from Minimum SIDE YARD Requirements  
Tax Map Key 7-5-035:009

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow a portion of an EXISTING TWO STORY SINGLE FAMILY DWELLING with a 6.5 to 7.1 feet SIDE YARD and a 1.6 to 1.9 foot open clear space in lieu of the minimum 7.5 FOOT SIDE YARD and 3.5 FOOT OPEN CLEAR SPACE YARD as required by PUD No.25 and Zoning Code, Article 1, Division 10, Section 25-66 (1) (a).

The subject property is located in the Alii Point Subdivision at Puapuaa, North Kona, TMK: 7-5-035-009 formerly TMK: 7-5-020-002. PUD No. 25 was approved on June 26, 1985 for a 21 lot SINGLE FAMILY RESIDENTIAL Subdivision with (0) Front and 7.5 FOOT SIDE YARD.

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 Alii Point Subdivision, consisting of 11,536 square feet of land area. The PUD No. 25 was approved on June 26, 1985 for a 21 lot SINGLE FAMILY RESIDENTIAL Subdivision with (0) Front and 7.5 FOOT SIDE YARD.
2. The subject 2-story single family dwelling was constructed under Building Permit No. 07285, together

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with Building Permit No. 07395 for the swimming pool, issued on February 6, 1986 for TMK: 7-5-035-009 formerly TMK: 7-5-020-002.

3. A survey map prepared and certified by Cassera Surveys shows the existing dwelling with the following encroachments:
  - a. At the Northwest boundary a trellis awing encroaches .3 feet or 3 and 5/8 inch into the neighboring lot no. 14. The applicant will cut the awning 3.5 feet back from the boundary thus eliminating the encroachment and meeting the open space requirement.
  - b. At the Southerly boundary the seawall encroaches 7.2 feet into the 40 foot shoreline setback. The applicant will remove that portion of the seawall which encroaches into the shoreline setback.
  - c. A minuscule corner portion of the shower enclosure protrudes into the south side yard by 1.0 foot.
  - d. In addition the second story eave encroaches by .4 feet or 4 and 7/8 inch into the south side yard. This eave is approximately 20 feet above the existing ground.
  - e. The plexiglass awing encroaches from 1.1 feet to 1.9 feet diagonally into the south side yard.
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 siting error was done at the time of construction with the encroachments. No other evidence has been

found to show otherwise.

7. It has been over 9 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.
8. The variance application was filed with the Planning Department of June 29, 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 present 6.5 to 7.1 feet SIDE YARD and 1.6 to 1.9 foot open clear space will not have a significant effect on the adjacent property. The encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the side yard. In the addition the height of the encroaching eaves are approximately 10 and 20 feet from the finished grade.
2. The applicant on his own volition will cut the awning 3.5 feet back from the Northwest boundary thus eliminating the encroachment and provide the minimum open space.
3. The applicant on his own volition will remove that portion of the seawall which encroaches into the shoreline setback.
4. 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.

5. 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 with a 6.5 to 7.1 feet SIDE YARD in lieu of the minimum 7.5 FOOT SIDE YARD. As such, the subject dwelling encroaches into the side yard by 4 and 7/8 inches to 12 inches. The roof eaves in the South side boundary encroaches by 2.1 feet to 2.9 feet with a 1.6 to 1.9 foot open clear space in lieu of the 3.5 FOOT OPEN SPACE. The roof eaves are approximately 10 and 20 feet above the finished grade. Therefore, the granting of this variance will not diminish the ability for adequate light, air and open space between the existing dwelling and the side property line to the adjacent lot.

As such, while the Zoning Code requires a minimum 7.5 foot side yard setback and 3.5 foot open space, 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

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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 petitioner will cut the plexiglass awing located on the Southerly boundary, back 3.5 feet within (1) year from the effective date of this variance.
4. The petitioner will remove that portion of the seawall which encroaches into the shoreline setback within (1) year from the effective date of this variance.
5. 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.

If you have any questions please do not hesitate to contact Royden Yamasato at this office.

Sincerely,

  
Virginia Goldstein  
Planning Director

EMM: rld

A:\75035009

xc: West Hawaii Office