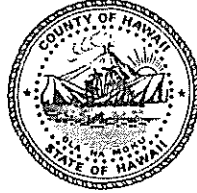


Stephen K. Yamashiro
Mayor



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

August 10, 1995

PD Var.683

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

Dear Mr. Conventz:

Variance Application WH(VAR 95-42)
Applicant: RICHARD VAUGHAN FAMILY TRUST
Variance from minimum SIDEYARD Requirements
Tax Map Key: 6-8-005:010

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 ONE STORY SINGLE FAMILY DWELLING with an 9.50 foot side yard, a stairwell and roof eave projection of 4.18 feet and a 3.7 feet open space in lieu of the minimum 10 FOOT SIDE YARD and 5 FOOT OPEN SPACE open as required by Chapter 25, Article 4, Section 25-124 (a)(2) and Article 1, Division 10, Section 25-66 (a).

The subject property is located on the west side of Kimo-Nui Street approximately 60 feet north of the Kimo Nui Place\Kimo Nui Street intersection in the Waikoloa Village Subdivision, Unit 1-A, South Kohala.

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 Waikoloa Village, Unit 1-A Subdivision consisting of 10,625 square feet of land area.
2. The subject single family dwelling was issued a Building Permit No.852112 on November 20, 1985 and closed on May 6, 1986.
3. A survey map prepared by Cassera Surveys shows the

9402

Mr. Klaus Conventz
Page 2
August 10, 1995

EXISTING ONE STORY SINGLE FAMILY DWELLING with an 9.50 foot side yard, a stairwell and roof eave projection of 4.18 feet and a 3.7 feet open space. As such, the subject dwelling encroaches into the north side by 6 inches. The staircase on the north side yard encroaches by 9 and 7/8 inches. In the south side the subject carport encroaches by 1 foot 3 and 5/8 inches. In the south side the subject carport encroaches by 1 foot and 3 inches.

4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for 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 adhere 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 dwelling which was approved by the County and the petitioner is trying to resolve a situation which she 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 JUNE 9, 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 .5 feet, .82 feet and 1.3 feet encroachments into the side yard setback and clear space requirements are not perceptibly visible that it could be readily detected or seen as encroachments into the side yard setback or the clear space requirements.
2. 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.
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.

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 building 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 9.50 feet and 4.18 feet from the north property line and 3.7 feet south property line. Therefore, the subject dwelling encroaches into the north side yard by 6 inches. The staircase on the north side yard encroaches by 9 and 7/8 inches. In the south side the subject carport encroaches by 1 foot 3 and 5/8 inches. These encroachments into the side yard 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 dwelling to the east. Therefore, while the Zoning Code requires a minimum 10 foot side yard and 5 foot open space, in this particular case, the encroachments are so minuscule 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

Mr. Klaus Conventz
Page 4
August 10, 1995

existing dwelling complies with the minimum side 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 Code 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. 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

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xc: West Hawaii Office