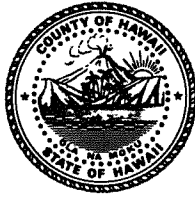


Stephen K. Yamashiro
Mayor



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
P 364 320 476

December 22, 1995

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

Dear Mr. Conventz:

Variance Permit No. 720 (VAR 95-83)
Applicant: Marlene E. Calvert Trust A
Variance From the Minimum Side Yard Setback Requirements of
Zoning Code, Chapter 25, Section 25-124(a)(1)(B) and
Section 25-66
Tax Map Key: 7-3-16:11

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow an existing two (2) story single family dwelling with side yard setbacks of 4.2, 1.3 and 1.3 from wall line and a 1.5 feet eave line to property line in lieu of the minimum 8 foot and 10 foot for two (2) story side yard requirement and minimum 4 foot clearspace requirement for open projection to the side property line of the Zoning Code, Chapter 25, Section 25-124(a)(1)(B) and Section 25-66.

The subject property is located at Kona Wonder View Lots at Kalaoa 2nd, North Kona, Hawaii, Tax Map Key: 7-3-16:11.

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

Special and Unusual Circumstances

1. The subject property is part of the Kona Wonder View Subdivision consisting of 7,531 square feet of land area.

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Mr. Klaus D. Conventz

Page 2

December 22, 1995

2. The subject single family dwelling was issued Building Permit No. 01342 in 1975.
3. A survey map dated October 24, 1995, prepared and certified by Wes Thomas Associates shows the existing dwelling with a side yard setback of 4.2, 1.3 feet and 1.3 feet. As such, the subject dwelling encroaches into the side yard setback at the side of the dwelling by 3.8 and 6.7 feet.
4. The homeowners at that time received all 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 1975.
6. It appears that a construction staking error occurred in 1975, 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. No other evidence has been found to show otherwise.
7. It has been over 20 years since the construction of the existing dwelling, which was approved by the County, and the applicant is trying to resolve a situation which she had not control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.

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 deprive 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 odd shaped lot with a front yard, rear yard and three (3) side yard setbacks as required by the Zoning Code.

Mr. Klaus D. Conventz
Page 3
December 22, 1995

2. The applicant on her own volition is honestly trying to resolve this longstanding problem which was not intentionally created by her. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.
3. Any architectural alternatives or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardship to the applicant(s) 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

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 of the subject property is presently situated 4.2, 1.3 and 1.3 feet from the side property line. Therefore, although only 4.2, 1.3 and 1.3 foot side yard setbacks are being provided against the side property line, the 3.8 and 6.7 foot encroachment will not diminish the ability for adequate light, air and open space between the existing dwelling and the side property line.

Therefore, while the Zoning Code requires a minimum 8-foot side yard setback, in this particular case, 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 setback requirements of the Zoning Code.

There was no objection from any of the participating 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 area's character and to adjoining properties.

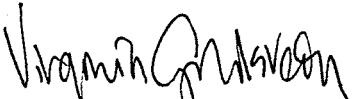
Mr. Klaus D. Conventz
Page 4
December 22, 1995

This variance request is approved subject to the following conditions:

1. The applicant, her 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 one (1) 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.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office