Stephen K. Yamashiro
Mayor

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Director

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Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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CERTIFIED MAIL
P 364 320 229

December 26, 1995

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

Dear Mr. Conventz:

Variance Permit No. 721 (VAR 95-84)
Applicant: Gilbert B. Thompson
Variance From Minimum Side Yard Setback Requirement of the Zoning Code, Chapter 25, Section 25-124(a)(1)(B)
Tax Map Key: 7-7-17:12

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 a side yard setback of 7.7 feet in lieu of the minimum 8 foot side yard setback requirement of the Zoning Code, Chapter 25, Section 25-124(a)(1)(B).

The subject property is located at White Sands Beach Estates, Unit I, at Laaloa, North Kona, Hawaii, Tax Map Key: 7-7-17:12.

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 White Sands Beach Estates Subdivision consisting of 7,754 square feet of land area.

2. The subject single family dwelling was issued Building Permit No. 395 in 1973.

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3. A survey map dated October 20, 1995, prepared and certified by Wes Thomas Associates shows the existing dwelling with a side yard setback of 7.7 feet. As such, the subject dwelling encroaches into the side yard setback at the side of the dwelling by 0.3 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 1973.

6. It appears that a minor construction staking error occurred in 1973, 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 minuscule encroachments. No other evidence has been found to show otherwise.

7. It has been over 22 years since the construction of the existing dwelling, which was approved by the County, and the applicant is trying to resolve a situation which he 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 a corner lot with two (2) front yard and two side yard setbacks as required by the Zoning Code.

2. The present encroachment of 0.3 feet within the side yard setback is minuscule in relationship to the minimum required 8 foot side yard setback. In this particular circumstance, this minuscule encroachment is not perceptibly visible that it could be readily detected or seen as encroaching into the side yard setback.

3. The applicant on his own volition is honestly trying to resolve this longstanding problem which was not intentionally created by him. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.

4. Any architectural alternatives or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardship to 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

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 7.7 feet from the side property line. Therefore, although only 7.7 foot side yard setback is being provided against the side property line, the 0.3 foot encroachment is so minuscule and is not visually perceptible that it 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, the encroachment is 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 existing dwelling complies with the minimum yard setback requirements of the Zoning Code.

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

This variance request is approved subject to the following conditions:

1. The applicant, his 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