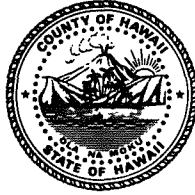


Stephen K. Yamashiro
Mayor



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 364 305 145

December 28, 1995

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

Dear Mr. Conventz:

Variance Permit No. 723 (VAR 95-86)

Applicant: Scott Lautner, Etal

Variance From Minimum Side Yard Setback and Clearance Requirement
of Chapter 25, Zoning Code Section 25-124(a)(2)(B) & Section 25-66(a)

Tax Map Key: 7-3-20:19, Lot A-3

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 one (1) story single family dwelling with a side yard setback of 8.73 feet and clearance of 4.4 feet in lieu of the minimum 10 foot side yard setback and clearance of 5 feet requirements of Chapter 25, Zoning Code, Section 25-124(a)(2)(B) and Section 25-66(a).

The subject property is located westerly of Mamalahoa Highway and on the easterly side of the Hawaii Belt Road at Kaloko, North Kona, Hawaii, Tax Map Key: 7-3-20:19, Lot A-3.

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 consisting of 16,087 square feet of land area is located in Kaloko, North Kona, Hawaii.
2. The subject single family dwelling was issued Building Permit No. 936114 in 1993.

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3. A survey map dated November 17, 1995, prepared and certified by Cassera Surveys shows the existing dwelling with a side yard setback of 8.73 feet. As such, the subject dwelling encroaches into the side yard setback at the side of the dwelling by 1.27 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 1993.
6. It appears that a minor construction staking error occurred in 1993, 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 miniscule encroachments. No other evidence has been found to show otherwise.
7. It has been over two (2) years since the construction of the existing dwelling, which was approved by the County, and the applicant(s) are trying to resolve a situation which they had not control over and have 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(s) 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 "Flag Lot" with three (3) side yard setbacks and a rear setback.
2. The present encroachment of 1.27 feet along the side of the dwelling is minor in relationship to the minimum required 10 foot side yard setback. In this particular circumstance, this minor encroachment is not perceptibly visible that it could be readily detected or seen as encroaching into the side yard setback.

3. The applicant(s) on their own volition are honestly trying to resolve this longstanding 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.
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(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(s) 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 8.73 feet from the side property line. Therefore, although only 8.73 feet side yard setbacks are being provided against the side property line, the 1.27 encroachment is so minor 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 10 - foot side yard setback, in this particular case, the encroachment is so miniscule 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(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

Mr. Klaus D. Conventz

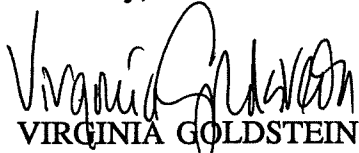
Page 4

December 28, 1995

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

EC:dmo
VA723.dmo

cc: West Hawaii Office