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Mayor



Virginia Goldstein  
Director

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## County of Hawaii

### PLANNING DEPARTMENT

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

#### CERTIFIED MAIL

June 20, 1996

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

Dear Mr. Conventz:

Variance Application WH(VAR 96-36)  
Variance No. 759  
Applicant: DOUGLAS E. AND EVA K. WARD  
Variance from Minimum FRONT AND SIDE YARD SETBACK Requirements  
Tax Map Key: 7-7-022:004

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling with a front yard of 17.8 to 17.9 feet and 19.7 to 19.8 feet front yard; a 6.6 to 6.7 feet side yard for an existing above grade swimming pool side yard, in lieu of the minimum 20 feet front yard and 10 feet side yard space as required by Chapter 25, Article 4, Section 25-124(a)(2)(A)(B).

The subject property is located in the Keauhou Uka Subdivision, Unit II, Lot 4, at Kapalaalaea 2nd, North Kona, Hawaii, TMK: 7-7-022:004.

The Planning Director has concluded that the variance request from the minimum front and side yard requirements should be approved based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling.
2. When the plans were approved by the Planning Department, the plans would

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have had to show that all minimum required setbacks were going to be adhere to for the proposed dwelling and above grade swimming pool in 1982.

3. There appears to have been a construction staking error occurred in 1982 when the dwelling and above grade swimming pool was constructed in the siting of the structure on the property. There also appears that a very minor siting error was done at the time of construction with the encroachments. No other evidence has been found to show otherwise.
4. It has been over 14 years since the construction of the existing dwelling and above grade swimming pool, which was approved by the County and the applicants are trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
5. The variance application was acknowledged as received by the Planning Department on May 9, 1996.
6. A survey map prepared by Wes Thomas Associates on April 29, 1996, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 19.7 to 19.8 feet front yard. The subject dwelling encroaches into the front yard by 2 feet and 3/8 inch to 3 feet and 5/8 inch.
7. In addition the survey map indicates the EXISTING TWO STORY SINGLE FAMILY DWELLING with a 17.8 to 17.9 feet front yard. The subject dwelling encroaches into the front yard by 2 feet 1 and 1/4 inch to 2 feet 2 and 3/8 inch.
8. The survey map also indicates the above grade swimming pool with a 6.6 to 6.7 feet side yard. The swimming pool encroaches 3 feet 3 and 5/8 inch to 3 feet 4 and 7/8 inch into the required side yard.

Therefore, considering the foregoing facts, the Planning Director has 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 applicants 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.
2. 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.
3. While there are other alternatives available the more practical solution is the granting of the variance.

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 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 encroaches into the front yard by 2 feet and 3/8 inch to 3 feet and 5/8 inch and 2 feet 1 and 1/4 inch to 2 feet and 2 and 3/8 inch. The existing above grade swimming pool encroaches 3 feet 3 and 5/8 inch to 3 feet 4 and 7/8 inch into the side yard. These encroachments into the front and side yard are minor but are not visually perceptible that it will diminish the ability for adequate light, air and open space.

Therefore, while the Zoning Code requires a minimum 20 feet front yard and 10 feet side yard, in this particular case, the encroachments are minor that 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 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

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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. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
4. 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