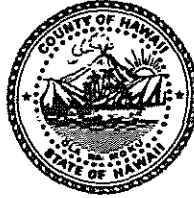


Stephen K. Yamashiro
Mayor



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

July 3, 1996

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

Dear Mr. Conventz:

Variance Application WH(VAR 96-37)
Variance No. 760
Applicant: MICHEL AND MICHELLE COLIN
Variance from Minimum Open Space Requirement
of the Zoning Code, Chapter 25, Article 1, Division 10, Section 25-66(a)(1)
Tax Map Key: 7-6-022:023

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an existing detached swimming pool-deck with a 6.1 to 7.75 feet open space in lieu of the minimum 5 feet open space as required by Chapter 25 (Zoning Code), Article 1, Division 10, Section 25-66(a)(1).

The subject property is located in the Komohana Kai Subdivision, Lot 23, Komohana Kai, Unit 1 at Holualoa 1 and 2, North Kona, Hawaii, TMK: 7-6-022:023.

The Planning Director has concluded that the variance request from the minimum 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 the dwelling.
2. 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 accessory structure in 1988.

07205

JUL 16 1996

Mr. Klaus D. Conventz
Page 2
July 3, 1996

3. There appears to have been a construction staking error occurred in 1988 when the accessory structure 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 8 years since the construction of the existing accessory structure which was approved by the County and the applicant is 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 accessory structure.
5. The variance application was acknowledged as received by the Planning Department on May 13, 1996.
6. A survey map prepared by Wes Thomas Associates on April 26, 1996, shows the **EXISTING DETACHED SWIMMING POOL-DECK** with a 6.1 to 7.75 feet open space. The subject accessory structure encroaches into the open space by 1 foot 1 and 1/4 inch to 2 feet 9 inches.

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 encroachment to occur.
2. Any architectural alterations or design changes to the accessory structure 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.

Mr. Klaus D. Conventz
Page 3
July 3, 1996

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 encroachment into the open space by 1 foot 1 and 1/4 inch to 2 feet 9 inches is minuscule and not visually perceptible that it will diminish the ability for adequate light, air and open space.

Therefore, while the Zoning Code requires a minimum 5 feet open space, 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 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. Remove the spa and spa deck.

Mr. Klaus D. Conventz


Page 4

July 3, 1996

4. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
5. 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

EMM:rld

a:\76022023\vcolin.app

xc: West Hawaii Office