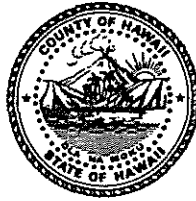


Stephen K. Yamashiro
Mayor



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 96-38)
Variance No. 761
Applicant: GEORGE TOM BEARD
Variance from Minimum Side yard Requirement
of the Zoning Code, Chapter 25, Article 8, Section 25-156(a)(2)
Tax Map Key: 7-5-012:021

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow a proposed single family dwelling with a 10 feet side yard in lieu of the minimum 20 feet side yard as required by Chapter 25, Article 8, Section 25-156(a)(2).

The subject property is located 259 feet west of the North Kona Belt Highway, Lot 4B, Auhaukeae, North Kona, Hawaii, TMK: 7-5-012: 021.

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. On September 26, 1995 a Consolidation/Resubdivision was applied for and approved for the subject property.
2. The applicant purchased the property on December 28, 1995 and recorded in the Bureau of Conveyance Document Number 92-212992.

07201

JUL 15 1996

Mr. Klaus D. Conventz

Page 2

July 3, 1966

3. A survey map prepared by Don McIntosh Consulting shows the PROPOSED SINGLE FAMILY DWELLING to be approximately 1,712 square feet, porte cochere - 800 square feet, and garage - 440 square feet.
4. The variance application was acknowledged as received by the Planning Department on May 16, 1996.
5. Chapter 25, Article 8, Section 25-155 Minimum building site average width states: "Each building site must have a **minimum average width of one hundred twenty feet** for the first one acre of required area plus twenty feet for each additional acre of required area. The maximum required average width for any building site shall be one thousand feet.
6. The subject parcel is zoned Agricultural (A-5a). Pursuant to Chapter 25, Article 8, Section 25-155, the minimum average width for an Agricultural (A-5a) would be 200 feet.
7. Chapter 25, Article 4, Section 25-123 Minimum building site average width states: "Each building site in an RS district shall have a **minimum average width of sixty feet**, plus two feet for each five hundred square feet of required building site area in excess of seven thousand five hundred square feet, except that no building site shall be required to have an average width of more than one hundred fifty feet."
8. The width at the Northeast side of the parcel is **90.00 feet**, and the Southwest width is **54.88 feet**. The length of the property is approximately 1000 feet long.
9. The subject property's minimum average width is **non-conforming** in the Agricultural zone.
10. In addition the subject property does not meet the minimum width of the smallest Single Family Residential Zoned District (RS-7.5) lot size.

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.

Mr. Klaus D. Conventz
Page 3
July 3, 1966

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. The applicants applied for and were granted a Consolidation/Resubdivision in 1995.
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 proposed dwelling on the subject property will be situated 10 feet into the side yard. This encroachment into the side yard 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 20 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 proposed dwelling will comply with the minimum yard requirements of the Zoning Code.

There was an objection from a surrounding property owner. A letter dated June 26, 1996 from David B. Kaapu attorney for Clifford Sugiyama stated that the proposed variance would not provide an adequate buffer and a smaller setback would adversely impact his clients property.

However, 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

Mr. Klaus D. Conventz
Page 4
July 3, 1966


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. 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

EMM:rld
a:\75012021\beard.app

xc: West Hawaii Office