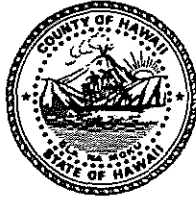


Stephen K. Yamashiro
Mayor



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

Z 095 323 610

July 19, 1996

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

Dear Mr. Conventz:

Variance Application WH(VAR 96-42)
Variance No. 765
Applicant: WALLACE E. LETH TRUST
Variance from Minimum SIDE AND REAR YARD Requirements
of the Zoning Code, Chapter 25, Article 8, Section 25-156(a)(1)(2)
Tax Map Key: 7-3-005: 064

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 19.89 feet side yard in lieu of the minimum 20 feet side yard and a 29.12 to 29.16 feet rear yard in lieu of the minimum 30 feet rear yard as required by Chapter 25 (Zoning Code), Article 8, Section 25-156(a)(1)(2).

The subject property is located in the Kona Acres Subdivision, Lot 15, at Kalaoa 5th, North Kona, Tax Map Key: 7-3-005: 064.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. A survey map prepared by Don McIntosh Consulting on June 3, 1996, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 19.89 feet side yard. The subject dwelling encroaches into the side yard by 1 and 3/8 inch.

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2. Additionally, the survey map indicates the subject dwelling with 29.12 to 29.16 feet rear yard. The subject dwelling encroaches into the rear yard by 10 and 1/8 inches to 10 and 5/8 inches.
3. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling.
4. 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 1986.
5. There appears to have been a construction staking error occurred in 1986 when the dwelling 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.
6. It has been over 10 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 no control over and have honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
7. The variance application was acknowledged as received by the Planning Department on June 6, 1996.

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 applicant on his own volition is 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.

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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 two story single family dwelling has a 19.89 feet side yard and 29.12 to 29.16 feet rear yard. As such the subject dwelling encroaches into the side yard by 1 and 3/8 inch and into the rear yard by 10 and 1/8 inches to 10 and 5/8 inches. These encroachments into the side and rear 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 side yard and 30 feet rear 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 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.

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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