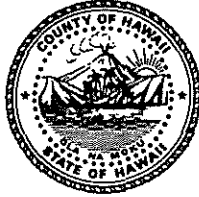


Stephen K. Yamashiro
Mayor



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 364 320 143

November 22, 1996

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

Dear Mr. Conventz:

Variance Application WH(VAR 96-67)
Variance No. 793
Applicant: Thomas C. Stifler Family Trust
Variance from Minimum Front, Side and Open Requirements
Tax Map Key: 7-6-012: 017

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 17.5 feet front yard in lieu of the minimum 25 feet front yard, 13.48 to 13.61 feet side yard in lieu of the minimum 15 feet side yard and a 13.5 feet open space in lieu of the minimum 19.0 feet open space, as required by Chapter 25, Article 4, Section 25-148 (a)(1) and (a)(2), and Article 1, Division 10, Section 25-66(a)(1).

The subject property is located at Holualoa 1st and 2nd, Lot 10-A, North Kona, Hawaii, TMK: 7-6-012: 017.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 24,742 square feet of land area.
2. The subject single family dwelling was issued the following Building Permits:
 - a. Building Permit No. 916684 on December 18, 1991 and closed on March 31, 1992.

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3. The subject property were issued the following Ohana Dwelling Permits:
 - a. Ohana Dwelling Permit No. 2341 on September 23, 1991.
 - b. Ohana Dwelling Permit No. 600 on August 4, 1987.
4. A survey map prepared by Donald C. McIntosh on October 12, 1996, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 17.5 feet front yard. The subject dwelling encroaches into the front yard by 7 feet 6 inches.
5. The survey map also indicates the subject dwelling with a 13.48 to 13.61 feet side yard. The dwelling encroaches into the side yard by 1 foot 4 and 3/4 inches to 1 foot 6 and 1/4 inches.
6. In addition the survey map indicates the existing two story single family dwelling with 13.50 feet open space. The northwest corner of the subject dwelling encroaches into the open space by 5 feet 6 inches.
7. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling.
8. 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 1991.
9. There appears to have been a construction staking error occurred in 1991 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.
10. It has been over 5 years since the construction of the existing dwelling which was approved by the County and the applicant is trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
11. The variance application was acknowledged as received by the Planning Department on October 16, 1996.

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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

The applicants on their own volition are honestly trying to resolve this 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.

1. 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.
2. 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 of the subject property is presently situated with 17.5 feet front yard. The subject dwelling encroaches into the front yard by 7 feet 6 inches. The survey map also indicates the subject dwelling with a 13.48 to 13.61 feet side yard. The dwelling encroaches into the side yard by 1 foot 4 and 3/4 inches to 1 foot 6 and 1/4 inches. In addition the survey map indicates the existing two story single family dwelling with 13.50 feet open space. The northwest corner of the subject dwelling encroaches into the open space by 5 feet 6 inches. These encroachments into the front, side and open space 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 25 feet front yard, 15 feet side yard and 19 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

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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 adjacent land 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. 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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