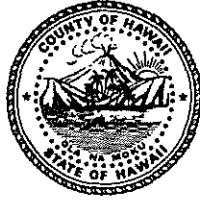


Stephen K. Yamashiro
Mayor



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 364 320 172

January 22, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR96-70)

Variance No. 804

Applicant: TERRY ZERNGAST, NEIL BENAROYA and ALFRED R. BENAROYA

Variance from Minimum FRONT YARD, SIDE YARD and OPEN SPACE

Requirements

Tax Map Key: 7-8-014: 078

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow ~~to allow~~ construction of a ONE STORY SINGLE FAMILY DWELLING with a 3.7 to 3.8 feet side yard in lieu of the minimum 8 feet side yard and a 1.7 to 1.8 feet open space in lieu of the minimum 4 feet open space; an EXISTING DETACHED GARAGE with a 3.3 to 3.5 feet front yard in lieu of the minimum 15 feet front yard, and a .7 to 1 feet open space in lieu of the minimum 10 feet open space; a 6.2 feet side yard in lieu of the minimum 8 feet side yard and a 3.6 to 3.7 feet open space in lieu of the minimum 4 feet open space, as required by Chapter 25, Article 5, Section 25-5-7(a) (1)(A) and Section 25-5-7(a) (1)(B); Chapter 25, Article 4, Section 25-4-44(a).

The subject property is located at Kahaluu Beach Lots, Lot 21-A, at Kahaluu, North Kona, Tax Map Key: 7-8-014: 078.

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 9,975 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 004130 on February 19, 1980 and closed on November 26, 1980 for repairs to single family dwelling.
 - b. Building Permit No. 906345 on October 2, 1990 and closed on August 12, 1991 for the demolition of covered lanai.
 - c. Building Permit No. 906455 on October 31, 1990 and closed on August 20, 1991 for the demolition and remodeling of single family dwelling.
 - d. Building Permit No. 906445 on November 24, 1992 and closed on December 3, 1992 for the demolition of concrete platform, lanai roof and supports, and sidewalk walkways.
 - e. Building Permit No. 936112 on November 5, 1993 for reconstruction of pre-existing conditions before Hurricane Iniki damage, replumbing, rewire, some structural, new makai foundation and covered lanai flooring, repaint of single family dwelling. The permit remains open.
 - f. Building Permit No. 945684 on August 29, 1994 for construction of upper level addition-billiards room, storage and bath, Jacuzzi portable spa on raised concrete foundation. Upgrading of footings, posts, girtis to 1991 UBC-reconstruction. The permit remains open.
3. A survey map prepared by Wes Thomas Associates on November 21, 1996, shows the **PARTIALLY CONSTRUCTED ONE STORY SINGLE FAMILY DWELLING** with 3.7 to 3.8 feet side yard in lieu of the minimum 8 feet side yard. As such, the subject dwelling encroaches by 4 feet 2 and 3/8 inches to 4 feet 3 and 5/8 inches into the required 8 feet side yard.
4. The survey indicates the **PARTIALLY CONSTRUCTED ONE STORY SINGLE FAMILY DWELLING** with a 1.7 to 1.8 feet side yard open space in lieu of the minimum 4 feet side yard open space. As such, the dwelling encroaches by 2 feet 2 and 3/8 inch to 2 feet 3 and 5/8 inches into the required 4 feet side yard open space.

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5. A survey map prepared by Wes Thomas Associates on November 21, 1996, shows the EXISTING DETACHED GARAGE with 3.3 to 3.5 feet front yard in lieu of the minimum 15 feet front yard. As such, the subject detached garage encroaches by 11 feet 6 inches to 11 feet 8 and 3/8 inches into the required 15 feet front yard.
6. The survey indicates the EXISTING DETACHED GARAGE with a .7 to 1 feet front yard open space in lieu of the minimum 10 feet front yard open space. As such, the detached garage encroaches by 9 feet to 9 feet 3 and 5/8 inches into the required 10 feet front yard open space.
7. A survey map prepared by Wes Thomas Associates on November 21, 1996, shows the EXISTING DETACHED GARAGE with a 6.2 feet side yard in lieu of the minimum 8 feet side yard. As such, the detached garage encroaches by 1 foot 9 and 5/8 inches into the required 8 feet side yard.
8. The survey indicates the EXISTING DETACHED GARAGE with a 3.6 to 3.7 feet side yard open space in lieu of the minimum 4 feet side yard open space. As such, the detached garage encroaches by 3 and 5/8 inch to 4 and 7/8 inches into the required 4 feet side yard open space.
9. A Settlement and Mutual Release Agreement was executed between the applicants, County of Hawaii Department of Public Works and the Planning Department dated October 26, 1996. This Settlement and Mutual Release Agreement resolved a dispute regarding alleged violations of the shoreline setback requirements, Special Management Area Use Permit regulations and unpermitted building violations.
10. 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 adhere to for the proposed dwelling in 1993.
11. There appears to have been a construction staking error occurred in 1993 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.
12. It has been over 3 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

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no control over and has honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.

13. The variance application was filed with the Planning Department on November 26, 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 their own volition are honestly trying to resolve this long standing problem which was not created by the applicant. 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.

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 is presently into the side yard 4 feet 2 and 3/8 inches to 4 feet 3 and 5/8 inches into the required 8 feet side yard and 2 feet 2 and 3/8 inch to 2 feet 3 and 5/8 inches into the required 4 feet side yard open space. The survey map shows the existing detached garage encroaches by 11 feet 6 inches to 11 feet 8 and 3/8 inches into the required 15 feet front yard and 9 feet to 9 feet 3 and 5/8 inches into the required 10 feet front yard open space. The existing detached garage encroaches by 1 foot 9 and 5/8 inches into the required 8 feet side yard and 3 and 5/8 inch to 4 and 7/8 inches into the required 4 feet side yard open space. These encroachments into the front yard, side yard, and open space are

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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 15 feet front yard and 10 feet front open space, 8 feet side yard and 4 feet side yard 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 and detached carport complies with the minimum yard requirements of the Zoning Code.

There were three objections from the general public and surrounding property owners. The objections detailed the problems surrounding the construction of the dwelling. The objections stated that the blocking out of air, light and view for this oceanfront property would negatively affect the character of the neighborhood, and would be adverse to public welfare, and inconsistent with applicable codes and General Plan.

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. All construction must comply with Chapter 27 of the Hawaii County Code.
4. The driveway must conform to the requirements of Chapter 22 of the Hawaii County Code.
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.

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Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office