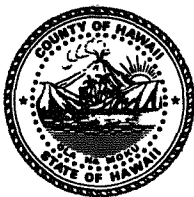


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

February 1, 1996

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

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

Dear Mr. Conventz:

Variance Permit No. 725
Applicant: Max F. and Maxine H. Bryson Family Trust
Variance From Minimum Rear Yard Clearspace Requirement
of the Zoning Code, Chapter 25, Section 25-66
Tax Map Key: 7-5-32:59

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow an existing single family dwelling with a rear yard setback of 9.96 feet for an open projection (stairway) in lieu of the required minimum 14 feet clearspace of the Zoning Code, Chapter 25, Section 25-66.

The subject property is located off Lewa Place, Kailua View Estates Subdivision, Auhaukeae 1st and 2nd, North Kona, Hawaii, Tax Map Key: 7-5-32:59.

The Planning Director has concluded that the variance request from the minimum rear/side yard setback clearspace requirement should be approved based on the following findings.

Special and Unusual Circumstances

1. The subject property is part of the Kailua View Estates Subdivision consisting of 15,419 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 04745 in 1981.
3. A survey map dated October 5, 1995, prepared and certified by Donald C. McIntosh shows the existing dwelling with a rear/side yard setback clearspace of 9.96 feet. As such, the subject dwelling encroaches into the rear/side yard setback clearspace at the rear/side of the dwelling by 4.04 feet.

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4. The homeowners at that time received all the necessary Department of Public Works, Building Division approvals for the dwelling.
5. 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 1981.
6. It appears that a minor construction staking error occurred in 1981, when the dwelling was constructed, in the siting of the structure on the property. It also appears that a very minor siting error was done at the time of construction with minuscule encroachments. No other evidence has been found to show otherwise.
7. It has been over 15 years since the construction of the existing dwelling, which was approved by the County, and the applicants are trying to resolve a situation which they had not control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner or applicants 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 subject property is an interior and rectangular lot with a front yard, rear yard and two (2) side yard setbacks as required by the Zoning Code.
2. The present encroachment of 4.04 feet of the open stairway into the rear yard setback clearspace is minor in relationship to the minimum required 14 foot rear-yard clearspace setback.
3. The applicants on their own volition are honestly trying to resolve this longstanding problem which was not intentionally created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to

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4. Any architectural alternatives or design changes to the dwelling to conform with the minimum setbacks would create undue and excessive hardship to the applicants 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 applicants when a more reasonable alternative is available by the granting of this variance application.

Intent and Purpose

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling of the subject property is presently situated 9.96 feet from the rear property line. Therefore, although only 9.96 foot rear/side yard setbacks are being provided against the rear/side property line, the 4.04 foot encroachment is minor and is not visually perceptible that it will not diminish the ability for adequate light, air and open space between the existing dwelling and the rear/side property line.

Therefore, while the Zoning Code requires a minimum 14 foot clearspace rear/side yard setback, in this particular case, the encroachment is so minor that it 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 setback requirements of the Zoning Code.

There was no objection from any of the participating government agencies.

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 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 area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

1. The applicants, their 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 one (1) year from the effective date of approval of this variance.
3. 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

EC:pak
varapprv

xc: West Hawaii Office