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Mayor



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County of Hawaii
PLANNING DEPARTMENT

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CERTIFIED MAIL
P 364 320 458

May 8, 1996

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

Dear Mr. Conventz:

Variance Permit No. 730
Applicant: John Lowrey Family Trust
Variance From the Minimum Front Yard Requirements of
Chapter 25, Zoning Code, Section 25-124, (a) (2) (A)
Tax Map Key: 6-6-002:29, Lot 1-F

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to recognize the location of existing building and site improvements and allow a portion of an existing dwelling "AS BUILT" to remain within the required minimum front yards of the subject property in lieu of the minimum twenty (20) foot side yard, Article 4 (Single Family Residential), SECTION 25-124 (a) (2) (A) (minimum yards).

The subject improved property is Lot 1-F, Land Court Application 1613, Map 2 and is situated at Lalamilo, South Kohala, Island and County of Hawaii and is within the "Waialea Beach Lots", and is commonly identified or referred to by tax map key parcel number, TMK: 6-6-02:29, Lot 1-F.

FINDINGS AND RECOMMENDATION

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

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FINDINGS

1. The subject 36,725 square foot parcel, Lot 1-F, as shown on Map 2 of Ld. Ct. App 1618 is zoned Single Family Residential (RS-10) by the County and designated Urban "U" by the State Land Use Commission (LUC). The property is within an area designated Special Management Area (SMA) by the County.
2. The minimum yard requirements in the RS-10 district are:

Front and rear yards: Minimum twenty (20) feet.
Side yards: Minimum ten (10) feet.

The subject garage's eave may extend six (6) feet into the affected front yard. A minimum fourteen (14) feet clear space is required between the edge of the existing garage's eave and that affected front property line.
3. The original single family dwelling and carport was issued Building Permit Nos. 793419 by the Department of Public Works (DPW), Building Division on December 18, 1979 and closed by the DPW, Building Division on September 15, 1980.
3. A recent survey map dated December 12, 1995, prepared and certified by Wes Thomas and Associates, Inc., submitted with the variance application shows a building encroachment into the affected minimum twenty (20) foot front yard. A corner of the existing garage is 19.6 feet from the affected front property lot line. The encroachment into the front yard consists of approximately one (1) square foot. The affected portion of garage eave is situated 14.6 feet from the front property and exceeds the minimum 14.0 foot clearspace requirement.
4. Subsequent to the construction of the original dwelling and carport, two (2) other building permits (B.P. No. 940049 and 940348) were issued to construct a shed and an alteration to the existing dwelling, by the Department of Public Works (DPW), Building Division. These permits were closed by the Department of Public Works, Building Division on March 1, 1994 and June 2, 1994, respectively.

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5. The zoning code requires a site plan, drawn to scale, including appropriate map graphics and dimensions, to identify the existing site and proposed new building improvements. A site plan and building construction plans for the original dwelling, carport, and subsequent building and site improvements were reviewed and approved by the Planning Department. However, a copy of the original building permit's approved site plan was not submitted with the subject variance application.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The applicant contends the encroachment was introduced and caused during the siting and construction of the carport's foundation resulting in the wall encroachment into the affected front yard. No evidence has been found to show indifference or premeditation by the owners or permittees to recklessly ignore the minimum yard requirements of the zoning code.
2. More than fifteen (15) years has lapsed from the completion date of the existing dwelling, garage, and related site improvements. The applicant(s) discovered and identified an existing site and building condition and are asking for relief from the minimum front yard requirements of the Zoning Code to resolve a staking error to correctly site and construct the permitted garage within the building envelope established by the minimum building yards of the Zoning Code. The staking and construction error was unintentional and discovered after a modern survey was performed and a plat map, drawn to scale, showing the existing site improvements or "AS BUILT" building improvements was examined by the applicants.

Therefore, considering the foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner or applicant(s) 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.

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ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicant include: removing the building or garage encroachments together with a modified roof eave resulting in a smaller garage area; acquiring additional property from the adjacent parcels, and, Lot; demolish, design, and reconstruct or construct a new garage within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The re-siting, redesign of the garage built and established in 1980 is economically unreasonable and would disrupt the garage's design, compromise building integrity, and possibly disrupt the location and function of the existing dwelling and existing site and landscaping improvements.

The applicant(s) on their own volition are honestly trying to resolve the garage encroachment problem. No evidence has been found to show indifference or premeditation by the owners or permittees to deliberately or intentionally allow the garage encroachment to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owners/applicants recited above. However, these alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners when a more reasonable alternative is available by the granting of the subject variance request (VAR 95-90).

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 site and building improvements were constructed with building permits issued to existing owners or authorized permittees. The existing garage was built under a valid building permit and it appears the owners or permittees complied with all building setback requirements and requested building inspections during the course of building construction and life of the building permit. The building permit requirements and procedures to inspect and monitor the construction of the dwelling, garage and all other permitted site improvements appear to have been satisfied and all issued building permits were closed by the DPW, Building Division.

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The garage building encroaches into one (1) of the front yards within the subject lot. The existing dwelling and garage fit into the residential character and "feeling" of the surrounding neighborhood and surrounding land pattern and uses. Therefore, the location of the existing garage built and established in 1980 has not and will not affect the adjacent parcels and detract from the character of the immediate neighborhood and surrounding area. The existing building encroachments were the result of a building or foundation staking error and/or misunderstanding or misinterpretation by the owners of the minimum building front yard or "setback" requirements. The majority or remaining area of the existing garage and existing garage eave complies with the minimum yards of the Zoning Code.

The subject variance application was received by the Planning Department on December 28, 1995 and by subsequent staff telephone discussions with the applicants representative, Mr. Klaus Conventz, the decision date by the Planning Director on the subject variance was extended and deferred until May 8, 1996.

There was no objection from any of the participating government agencies or 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 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 adjoining lots or parcels, the neighborhood, and character of the surrounding properties.

This variance request is approved subject to the following conditions:

1. The applicant(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners have identified and acknowledge the subject building encroachment and use were built within the affected minimum front yard prescribed by Chapter 25, Zoning. The applicants/owners, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal

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injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. The approval of this variance is only from the Zoning Code minimum front yard requirements.
4. Future building improvement shall be subject to State and County regulations pertaining to occupancy and building.

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