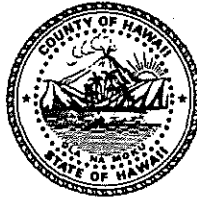


Stephen K. Yamashiro
Mayor



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 293 080 462

May 30, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR 97-26)

Variance No. 832

Applicant: RONALD A. and DORIS E. BOWEN

Variance from Minimum FRONT YARD, REAR YARD, SIDE YARD and OPEN
SPACE Requirements

Tax Map Key: 7-3-041:041

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an EXISTING ONE STORY SINGLE FAMILY DWELLING and PATIO with a 17.7 to 19.5 feet front yard in lieu of the minimum 20 feet front yard, a 18.6 feet rear yard in lieu of the minimum 20 rear yard and a 9.67 side yard in lieu of the minimum 10.0 feet side yard; a DETACHED GARAGE with a 10.0 to 10.3 feet rear yard in lieu of the minimum 20 feet rear yard and a 7.8 to 8.0 feet open space in lieu of the minimum 14 feet open space, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A), Section 25-5-7(a)(2)(B) and Division 4, Section 25-4-44(a).

The subject property is located in the Kona Palisade Subdivision, Lot 68, Unit III, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-041: 041.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 12,431 square feet of land area.
- 2.
3. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 790855 opened in 1979 for a single family dwelling.
 - b. Building Permit No. 896487 opened on October 19, 1989 and closed on January 4, 1991 for a garage.
4. A survey map prepared by KKM Surveys on April 28, 1997, shows the EXISTING ONE STORY SINGLE FAMILY DWELLING and PATIO with 17.7 to 19.5 feet front yard in lieu of the required 20 feet front yard. As such, the dwelling encroaches by 6 inches to 2 feet 3 and 5/8 inches into the required 20 feet front yard.
 5. The survey map shows the EXISTING ONE STORY SINGLE FAMILY DWELLING with a 18.6 feet rear yard in lieu of the required 20 feet rear yard. As such, the single family dwelling encroaches by 1 foot 4 and 7/8 inches into the required 20 feet rear yard.
 6. The survey map shows the EXISTING ONE STORY SINGLE FAMILY DWELLING with a 9.67 feet side yard in lieu of the required 10 feet side yard. As such, the single family dwelling encroaches 4 inches into the required 10 feet side yard.
 7. The survey map shows the DETACHED GARAGE with a 10.0 to 10.3 feet rear yard in lieu of the required 20 feet rear yard. As such, the detached garage encroaches 9 feet 8 and 3/8 inches to 10 feet into the required 20 feet rear yard.
 8. The survey map shows the DETACHED GARAGE with a 7.8 to 8.0 feet open space in lieu of the required 14 feet open space. As such, the detached garage encroaches 6 feet to 6 feet 2 and 3/8 inches in the required 14 feet open space.
 9. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling, patio and detached garage.
 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, patio and detached garage in 1979.
 11. There appears to have been a construction staking error occurred in 1979 and 1987 when the dwelling, patio and detached garage were 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.

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12. It has been over 18 years since the construction of the existing dwelling, patio and garage which was approved by the County and the petitioner 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.
13. The variance application was filed with the Planning Department on May 1, 1997.

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 front yard 6 inches to 2 feet 3 and 5/8 inches into the required 20 feet front yard; 1 foot 4 and 7/8 inches into the required 20 feet rear yard and 4 inches into the required 10 feet side yard. The detached garage encroaches 9 feet 8 and 3/8 inches to 10 feet into the required 20 feet rear yard and 6 feet to 6 feet 2 and 3/8 inches in the required 14 feet open space. These encroachments into the front yard, rear yard, side yard 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

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Zoning Code requires a minimum 20 feet front yard, 20 feet rear yard, 10 feet side yard and 14 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 granting of this variance. The rest of the existing dwelling, patio and detached garage complies with the minimum yard requirements of the Zoning Code.

There were no objections from any of the participating government agencies or 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.
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. Any encroachments within the County right-of-way should either be removed or approved and permitted by the Department of Public Works.
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.

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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