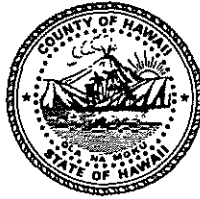


Stephen K. Yamashiro
Mayor



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 293 080 449

May 2, 1997

Mr. Robert D. Triantos
Carlsmith Ball Wichman Case & Ichiki
P.O. Box 1720
Kailua-Kona, Hawaii 96745-1720

Dear Mr. Triantos:

Variance Application WH(VAR 97-22)
Variance No. 824
Applicant: FRIEDRICH BOECK and BEATE NEHER
Variance from Minimum SIDE YARD Requirements
Tax Map Key: 8-2-008: 037

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 side yard of 18.10 feet in lieu of the minimum 20 feet side yard as required by Chapter 25, Article 5, Division 1, Section 25-5-76 (a).

The subject property is located at Kalama 5, Lot A, Being a portion of land commission award 8530 to Kawaiki and Grant 1189 to Kalua, South Kona, Hawaii TMK: 8-2-008: 037.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.108 acres of land area.
2. The subject single family dwelling was issued the following:
 - a. Building Permit No. 915699 opened on June 5, 1991 and closed on December 16, 1991 for a single family dwelling.

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- b. Building Permit No. 916147 opened on September 10, 1991 for a retaining wall.
3. A survey map prepared by KKM Surveys on March 25, 1997, shows the EXISTING TWO STORY SINGLE FAMILY DWELLING with 18.1 feet side yard in lieu of the required 20 feet side yard. As such, the subject dwelling encroaches by 1 foot 10 and 7/8 inches into the required 20 feet side yard.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for 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 adhere to for the proposed dwelling in 1991.
6. There appears to have been a construction error occurred in 1991 when the dwelling was constructed on the property. No other evidence has been found to show otherwise.
7. It has been over 6 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.
8. The variance application was filed with the Planning Department on April 2, 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 them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.

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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 encroaches into the side yard by 1 foot 10 and 7/8 inches into the required 20 feet side yard. This encroachment into the side yard is 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 20 feet side yard, in this particular case, the encroachment is 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 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. All other applicable State and County rules and regulations shall be complied with.

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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

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

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office