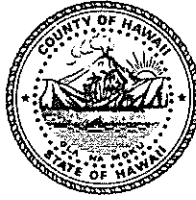


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL
P 417 370 013

April 3, 1998

Mr. Charles Kohn
P.O. Box 1283
Kailua-Kona, Hawaii 96745

Dear Mr. Kohn:

Variance Application WH(VAR 98-005)
Variance No. 907
Applicant: CHARLES KOHN
Owner: BRIAN J. SHAW
Request: Variance from Minimum Side Yard Requirements
Tax Map Key: 6-4-017: 074

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow the existing one story single family dwelling with a 14.81 feet side yard in lieu of the minimum 20 feet side yard, as required by Chapter 25, Article 5, Division 7, Section 25-5-77(a).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is located at Lot 17-B, Grant 7333 to Mileka Makekau, Puukapu Homesteads, Second Series, Puukapu, Waimea, South Kohala, Hawaii,
Tax Map Key: 6-4-017: 074.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.069 acres of land area.
2. The subject single family dwelling was issued the following building permit:

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Mr. Charles Kohn
Page 2
April 3, 1998

- a. Building Permit No. 955950 opened on November 22, 1995 and closed on February 6, 1997 for the construction of the single family dwelling.
3. A survey map prepared by Donald J. Murray on June 26, 1997, shows the existing one story single family dwelling with a 14.81 feet side yard in lieu of the minimum 20 feet side yard. As such the dwelling encroaches 5 feet 2-1/4 inches into the required 20 feet side yard.
4. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. When approved by the Planning Department, the plans would have had to have shown that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1995.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1995 when the dwelling was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
7. It has been over 3 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the building.
8. The variance application was filed with the Planning Department on January 20, 1998.

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 owner on his own volition is honestly trying to resolve this problem which was not created by himself. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.

Mr. Charles Kohn
Page 3
April 3, 1998

2. Any architectural alterations or design changes to the building to conform with the minimum setbacks would create undue and excessive hardships for the applicant when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable solutions available without excessive demands being placed on the owner 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 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 5 feet 2-1/4 inches into the required 20 feet side yard. This encroachment into the side yard will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 20 feet side yard, in this particular case, the encroachment is relatively minor and 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. There were two letters in support of the variance request.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, this variance 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 owner, 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.

Mr. Charles Kohn
Page 4
April 3, 1998

3. If applicable, approval from the Board of Appeals for all Building Code Violations will be obtained.
4. 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.

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

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\64017-74\shaw.app

xc: West Hawaii Office