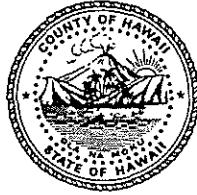


Stephen K. Yamashiro  
Mayor



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

VAR 602

#### CERTIFIED MAIL

July 19, 1994

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

Dear Mr. Conventz:

Variance Application WH(VAR94-37)  
Applicant: KLAUS CONVETZ  
Variance from Minimum REAR & SIDE YARD OPEN CLEARSPACE YARD SETBACK  
Requirements  
Tax Map Key: 7-6-24: 15

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow an EXISTING TWO STORY SINGLE FAMILY DWELLING with a 19.64 and 19.84 foot REAR YARD SETBACK and a Open Lanai Deck with a 3.90 foot Open Clearspace Side Yard Setback in lieu of the minimum 20 FOOT REAR YARD SETBACK and 5 foot open clearspace side yard setback as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (a)(2)(A) (Minimum yards) and Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations), Section 25-66 (a)(1).

The subject property is located on the east (mauka) side of a private cul-de-sac road approximately 75 feet north of the Royal Poinciana Drive/Private Road intersection in the Kalani Breezes Condominiums, North Kona, Hawaii, TMK: 7-6-24: 15.

However, there were two letter submitted in objection to the granting of this variance request. In accordance with the provisions of Section 25-27.0 of the Zoning Code, each person who qualifies as an "Interested Party" may request a review of the director's action on the variance application within ten days from

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the date of receipt of their being notified of the Planning Director's approval of your request.

Therefore, if a request for review is made by an "Interested Party", that request must be evaluated and presented to the County of Hawaii Planning Commission for its disposition. As such, the final approval of the variance will be effective on the above date, if no appeal of the Planning Director's approval decision is received by our office.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is situated in the Kalani Makai Subdivision which is in the Single Family Residential -10,000 square foot (RS-10) zone district.
2. The subject single family dwelling was issued Building Permit No. 905559 on April 17, 1990 and closed on November 8, 1991 by the Building Department.
3. The homeowner, at that time represented on the site plan submitted for this building permit that the addition would comply with the minimum side and rear yard setbacks required by the Zoning Code.
4. A certified survey map prepared by Reid & Associates shows the dwelling with a 19.64 to 19.84 foot rear yard setback and a open lanai with a 3.90 foot side open clearspace yard. Only the east corner of the existing lanai of the dwelling encroaches 1.1 foot into the east side open clearspace yard setback.
5. The petitioner purchased the dwelling in 1992, approximately 1 year after the construction of the dwelling.
6. Also on the subject property is an Ohana Dwelling (OHD 89-335 approved on August 22, 1989) situated to the front of the property. Building Permit No. 905560 was issued on April 17, 1990 and closed on November 8, 1991 for the Ohana Dwelling.
7. The variance application was filed with the Planning Department on May 23, 1994.

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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 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 subject property is a semi-rectangular parcel and an interior lot.
2. The present 4 3/8 inch and 2 inch encroachments into the rear yard setback and 1 foot - 1 and 1/4 inch or 13 and 1/4 inch encroachments into the side yard open clearspace yard setback are minuscule in relationship to the minimum required 20 foot and 5 foot side open clear space yard setback. These minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the rear and side yard.
3. The applicant on his own volition is honestly trying to resolve this long standing 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 occur.
4. 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. The applicant will be required to secure a building permit for the illegally constructed guest house.

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

1. 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 situated 19.64 and 19.84 foot from the Rear property line and a Open Lanai Deck with a 3.90 foot Open Clearspace from the side yard property line. The

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property to the east is already developed with a single family dwelling and an Ohana dwelling. The structures on the adjacent property comply with the minimum setback requirements. Therefore, the proposed variance requests are minuscule in nature that although it deviates from the required setbacks, the space between structures and property lines does provide for adequate light, air and circulatory functions between the dwelling and the rear and side property lines. In addition the requested variances are minuscule and are not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the north rear property line and east side property line.

Therefore, while the Zoning Code requires a minimum 20 foot rear and 5 foot side open clearspace yard setbacks, in this particular case, the 4 3/8 inch and 2 inch encroachments into the rear yard setback and 1 foot - 1 and 1/4 inch or 13 and 1/4 inch encroachments are minuscule for both the rear and side open clear space yard setback. As such, although the standards are not being met, in this particular instance, there is adequate yard space in light of the circumstances, 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 setbacks requirements of the Zoning Code.

There were 2 objections from surrounding property owners to the proposed variance request. In addition, the Department of Public Works, Building Division states that a variance from the Housing Code is required to be secured from the Board of Appeals, if the existing condition is to be pursued. A condition of approval of the variance is that approval of the open clear space yard setback also be obtained from the Board of Appeals.

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 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.

Mr. Klaus Conventz

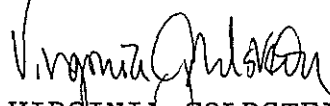
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2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance or upon securing of the variance from the Board of Appeals for the Housing Code variance, whichever occurs first.
3. The petitioner and/or landowner shall be responsibility for the securing of a variance from the side yard setback requirements of the Housing Code from the Board of Appeals.
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.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

RHY:rld  
1023Q

xc: West Hawaii Office