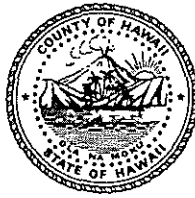


Stephen K. Yamashiro
Mayor



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

PD Var.607

CERTIFIED MAIL

August 1, 1994

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

Dear Mr. Conventz:

Variance Application WH(VAR94-41)
Applicant: KLAUS CONVETZ
Variance from Minimum FRONT & SIDE YARD SETBACK Requirements
Tax Map Key: 7-5-28: 8

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 14.9 FOOT FRONT YARD SETBACK AND 7.6 FOOT SIDE YARD SETBACK in lieu of the minimum 15 FOOT FRONT YARD SETBACK AND 8 FOOT SIDE YARD SETBACK as required by Chapter 25 (Zoning Code), Article 18 (Unplanned), SECTION 25-237 (Other regulations)(b).

The subject property is located at the southeast end of the Milena Place cul-de-sac approximately 310 feet south of the Aloha Kona Drive/Milena Place intersection in the Kona Heights Subdivision, Hienaloli, North Kona, Hawaii, TMK: 7-5-028: 008.

PROPOSED REQUEST

1. The subject property is part of the Kona Heights Subdivision, Increment II, consisting of 9,004 square feet of land area.
2. The subject single family dwelling was constructed under Building Permit No. 2692 issued on December 19, 1977.
3. A survey map dated March 24, 1994 was prepared and certified by Klaus Conventz shows the existing dwelling with a 14.9 FOOT FRONT YARD SETBACK AND 7.6 FOOT SIDE YARD SETBACK from the east side property line. As such, the subject dwelling encroaches into the front yard setback by 1 and 1/4 inches and 2 feet - 4 and 7/8 inches into the sideyard setback.

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4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for the 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 adhered to for the proposed dwelling in 1977.
6. It appears that a minor construction staking error occurred in 1977 when the dwelling was constructed in the siting of the structure on the property. It also appears that a very minor siting error was done at the time of construction with the minuscule encroachments. No other evidence has been found to show otherwise.
7. It has been over 17 years since the construction of the existing dwelling which was approved by the County and the petitioner 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 dwelling.
8. The variance application was filed with the Planning Department on JUNE 14, 1994.

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 rectangular parcel.
2. The present 1 and 1/4 inches into the front yard setback and 2 feet - 4 and 7/8 inches into the east sideyard setback are minuscule in relationship to the minimum required 15 front yard and 8 foot side yard setback. In this particular circumstance, only a portion of the northeast corner of the dwelling is encroaching into the sideyard setback area. Therefore, these minuscule encroachments are not perceptibly visible that it could be readily detected or seen as encroachments into the front or side yard.

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3. The applicant on her 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.

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 14.9 feet from the front property line and 7.6 feet from the east side property line.

Therefore, although only a 14.9 front yard setback and 7.6 east side yard setbacks are being provided, the encroachments are only portions of two corners of the dwelling. Therefore, these encroachments are so 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 side property line to the adjacent lot.

Therefore, while the Zoning Code requires a minimum 15 foot front yard setback and 8 foot side yard setback, in this particular case, the encroachments are so minuscule 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 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 and Subdivision Codes and the

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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. The applicant secure a variance from the Board of Appeals for the Housing Code setback requirements.
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

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xc: West Hawaii Office