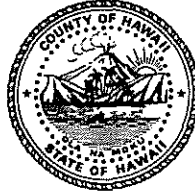


Stephen K. Yamashiro  
Mayor



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

March 15, 1995

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

Dear Mr. Conventz:

Variance Application (VAR94-71)  
Variance No. 636  
Applicant: Klaus Conventz  
Landowner: CORNELIUS R. NEAL  
Variance from Minimum Sideyard Setback Requirements  
Tax Map Key: 7-3-046: 071

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of variance No. 636 to allow an existing one story single family dwelling with a 19.80 foot side yard setback in lieu of the minimum 20 foot side yard setback as required by Chapter 25 (Zoning Code), Article 8 (Agriculture), Section 25-156 (a) (2) (Minimum yards).

The subject property is located on the west side of Nehiwa Street approximately 400 feet north of the Nehiwa Street/Kukuna Street intersection in the Kona Acres subdivision in Ooma 1st, North Kona, Hawaii, TMK: 7-3-046: 071.

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kona Acres Subdivision consisting of 43,561 square feet of land area.
2. The subject single family dwelling was constructed in 1978 under Building Permit No. 002845 issued on March 16, 1978 by the Department of Public Works, Building Division.

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3. A survey map dated prepared by Donald McIntosh shows the existing dwelling with 19.86 side yard setback at the northeast corner of the dwelling. As such, the subject dwelling encroaches into the side yard setback at the NORTHEAST CORNER OF THE DWELLING BY .23 FEET-1 OR 2 AND 3/4 INCHES.
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 1978.
6. It appears that a MINOR construction staking error occurred in 1978 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 2 and 3/4 inch encroachment. 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 to disclosure of all facts concerning the dwelling.
8. The variance application was filed with the Planning Department on MARCH 15, 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 and an interior lot with a front and rear yard and two side yard setbacks.
2. The present 2 and 3/4 inch encroachment into the north side yard setback is only for the northeast portion and is

minuscule and not perceptibly visible that it could be readily detected or seen as an encroachment into the side yard.

3. The applicant on his own volition is honestly trying to resolve this long standing problem which not intentionally created by them. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachment 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 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 is presently situated 19.80 feet from the north side property line. Therefore, although only 19.80 foot front yard setback is being provided against the north side property line, 2 and 3/4 inch encroachment is so minuscule and is not visually perceptible that it will diminish the ability for adequate light, air and open space between the existing dwelling and the side property to the adjacent lot. Therefore, while the Zoning Code requires a minimum 20 foot side yard setback. In this particular case, the encroachment is 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 participating government agencies.

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 cause substantial adverse impact to the areas character and to adjoining properties.

This variance request is approved, subject to the following

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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.

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  
f Planning Director

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xc: West Hawaii Office