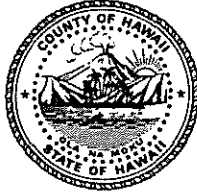


Stephen K. Yamashiro  
Mayor



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

JUL 06 1995

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

Dear Mr. Conventz:

VARIANCE NO. 666  
Variance Application WH(VAR95-34)  
Applicant: JACK & MARYLOU SAMPLEY  
Consultant: KLAUS CONVENTZ  
Variance from Minimum SIDE YARD SETBACK Requirements  
Tax Map Key: 7-3-039: 044

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your VARIANCE REQUEST NO. 666 to allow an existing single family dwelling with the following variance requests:

1. 3.9 to 8.1 foot with a zero to 4 foot open space within the west side yard; and
5. A gazebo with a zero side yard in lieu of the minimum 10 foot side yard and 5 foot open space yard as required by (Zoning Code), Article 18, SECTION 25-237 (b) and Article 1, Division 10, SECTION 25-66 (a).

The subject property is located at the northeast end of Ohala Place approximately 90 feet north of the Ala Kapua Street/Ohala Place intersection in the Kona Palisades Subdivision, Unit III, North Kona, TMK: 7-3-039: 044.

The Planning Director has concluded that the variance request from the MINIMUM SIDE YARD SETBACK requirements should be DENIED, based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consisting of approximately 10,290 square feet is situated in the Kona Palisades Subdivision, Unit III which is in the Unplanned (U) zone district.

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2. The subject single family dwelling was issued Building Permit No. 0264 on February 21, 1973. On the building permit application, the Distance to the nearest interior lot boundary is noted at 10 feet.
3. Building Permit No. 03649 was issued on June 6, 1979 for a swimming pool. On the building permit application, the Distance to the nearest interior lot boundary is noted at 10 feet.
4. Building Permit No. 925746 was issued on May 20, 1992 for a 2 bedroom/2 bathroom addition including observation and covered lanai with carport and storage locker. On the building permit application, the Distance to the nearest interior lot boundary is noted at 10 feet.
5. A detailed certified survey site plan prepared by Wes Thomas & Associates shows the following encroachments:
  - a. Dwelling: 6.1 to 1.9 feet into the west side yard with the roof overhang 5 to 1 feet into the west side yard open space;
  - b. Dwelling: 1.2 to 0.5 feet within the north side yard;
  - c. Dwelling: 3.7 to 1.0 feet into the north side yard with the roof overhang 0.1 feet into the north side yard open space;
  - d. Dwelling: 0.8 to 0.6 feet with the roof overhang 1.2 to 0.9 feet into the south side yard open space;
  - e. Gazebo: 10 feet into the south side yard;
  - f. Wall and landscaping improvements within the Ohala Place; and
  - g. Wall encroachments into the adjacent property to the south.
6. There are no plans available which show that the subject encroachments were approved as constructed.
7. The Department of Public Works, Building Division nor the Planning Department is responsible for ensuring that any proposed structure will comply with the required setbacks. The responsibility for ensuring that the structures are situated in accordance with the approved construction plans and building permit rests with the landowner. The fact

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that there is a building permit which was approved by the Planning and Building Division of the Department of Public Works, is evidence that the minimum setbacks of 10 feet were indicated on the site plan submitted for building permit. Considering this scenario, the construction of the carport and and storage locker area did not follow the approved plans. In addition, there are no records of any building permit being issued by the Department of Public Works, Building Division for the gazebo.

8. The approved plans for the addition to the dwelling are no longer available, as such, we are unable to ascertain exactly the approved dimensions and square footages of the existing dwelling by the building permits actually issued.
9. The variance application was filed with the Planning Department on May 2, 1995.

Based on the above, there are no unusual or special circumstances related to the property or deprivation of substantial property rights which would necessitate the west side yard setback variance. The additional structural additions to the existing dwelling were not constructed in accordance with approved plans based on the official records. There was no evidence submitted which shows or justifies the necessity of the approval of the variance relative to any special or unusual circumstances related to the property.

Therefore, considering the foregoing facts, it is determined that there are no 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 an irregular shaped parcel at the end of a cul-de-sac with a front and rear yard and three side yard setbacks as required by the Zoning Code.
2. The subject property is similar in size with all surrounding properties in this subdivision. In this case, the property has been developed to its fullest extent, but this has resulted in having the existing encroachments. The encroachment of the carport/storage locker area which encroaches into the west side property line as well as into the adjacent property significantly impacts upon the adjacent property.

Therefore, considering the history of the development of the property, the alternatives available to the applicant has to consist of whether or not the applicant is reasonably able to correct the encroachments. In this case, the denial of the two variance requests are determined to be reasonable, in view of the location of the encroachments and its relationship to the existing structures. As such, the applicant has other alternatives in which to meet with the minimum side yard setback requirements.

3. The applicants ability to comply with the minimum side yard setback requirements is available without a variance. Therefore, although it will involve costs for the petitioner, it is not expected to be an unreasonable option due to the circumstances.

Based on the above cited considerations, there are other reasonable alternatives that would resolve the difficulty.

#### 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. If the construction of the carport/storage locker area of the dwelling had been constructed in accordance with the approved plans, the applicant would not have had this problem.

Additionally, the illegal encroachments would not have been approved because the plans would have shown that the improvements would encroach into the minimum side yard setbacks. The illegally constructed improvements are self imposed and as exists do not provide for the adequate air, light circulation and physical separation as the encroachments impacts upon the adjacent property to the west.

2. Therefore, in light that this is a variance request it is incumbent upon the applicant to show evidence with respect to the variance criteria and this has not been demonstrated.

Based on the foregoing findings, this variance request would not 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.

Mr. Klaus Conventz

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Therefore, this variance request for the requested variances are hereby denied.

In view of the denial of the variance requests, the applicant shall be required to remove the encroachments into the side yard setback requirements within six (6) months from the date of receipt of this denial decision.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of the completed application form and contents, including a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to be the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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Should you have any questions, please feel free to contact Royden Yamasato of our office at 329-4878.

Sincerely,

*Rodney K. Nelson*

*R* VIRGINIA GOLDSTEIN  
Planning Director

RHY:rld  
1377Q

Enc: Copy of PD Appeal Application form

xc: DPW-Building, Kona Office  
West Hawaii Office  
Richard Skarnes