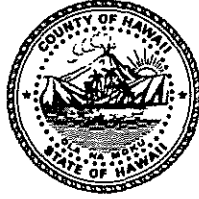


Stephen K. Yamashiro  
Mayor



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**  
P 364 320 121

December 10, 1996

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

Dear Mr. Conventz:

Variance Application WH(VAR 96-68)  
Variance No. 795  
Applicant: DANIEL E. APOCADA, ETAL.  
Variance from Minimum SIDE YARD and OPEN SPACE Requirements  
Tax Map Key: 7-5-018: 027

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an **EXISTING TWO STORY SINGLE FAMILY DWELLING** with a 7.8 feet side yard with a 3.5 feet open space in lieu of the minimum 8 feet side yard and 4 feet open space; and a **OPEN CARPORT** with a 9.7 feet front yard open space in lieu of the minimum 10 feet front yard open space as required by Chapter 25, Article 4, Section 25-124 (a)(B), and Article 1, Division 10, Section 25-66(a)(1).

The subject property is located at Portion of Grant 5327, Parcel A, at Waiaha 2nd, North Kona, Tax Map Key: 7-5-018: 027.

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 6,377 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 48486 on May 28, 1971 for a second story addition. **12411**
  - b. Building Permit No. 50317 on December 2, 1971 for an open carport.

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3. A survey map prepared by Wes Thomas Associates on October 8, 1996, shows the **EXISTING TWO STORY SINGLE FAMILY DWELLING** with 7.8 feet side yard in lieu of the required 8 feet side yard. As such, the subject dwelling encroaches by 2 and 3/8 inches into the required 8 feet side yard. The dwelling encroaches 3.5 feet in lieu of the required 4 feet open space. As such, the dwelling encroaches 6 inches into the required 4 feet open space.
4. A survey map shows the **EXISTING OPEN CARPORT** with 9.7 feet front yard open space in lieu of the required 10 feet front yard open space. As such, the subject open carport encroaches by 3 and 5/8 inches into the required 10 feet front yard open space.
5. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for dwelling.
6. 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 and carport in 1971.
7. There appears to have been a construction staking error occurred in 1971 when the dwelling and carport were constructed in the siting of the structure on the property. There also appears that a very minor siting error was done at the time of construction with the encroachments. No other evidence has been found to show otherwise.
8. It has been over 25 years since the construction of the existing dwelling and carport which was approved by the County and the petitioner is trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure to disclosure of all facts concerning the dwelling.
9. The variance application was filed with the Planning Department on October 24, 1996.

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 applicant on their own volition are honestly trying to resolve this long standing problem which was not created by the applicant. The investigation of this particular

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matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.

2. 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

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 into the side yard by 2 and 3/8 inches and 6 inches into the side yard open space. The existing open carport encroaches by 3 and 5/8 inches into front yard open space. These encroachments into the side yard and open space are minor but are not visually perceptible that it will diminish the ability for adequate light, air and open space. Therefore, while the Zoning Code requires a minimum 8 feet side yard, 4 feet side open space and 10 feet front yard open space in this particular case, the encroachments are minor that 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 and carport 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.

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 Code 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.
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

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the Planning Department within a year from the effective date of approval of this variance.

3. The CRM wall along Alii Drive encroaches into the right-of-way. The applicant must either remove the encroachment or obtain a conditional permit from the Department of Public Works.
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

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xc: West Hawaii Office