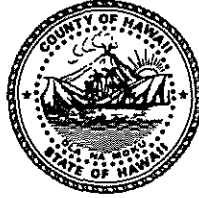


Stephen K. Yamashiro  
Mayor



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 364 320 161

January 6, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR 96-73)  
Variance No. 798  
Applicant: RONI MARLEY  
Variance from Minimum OPEN SPACE Requirements  
Tax Map Key: 7-3-019: 008

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an EXISTING walkway landing with a 4.3 to 4.5 feet open space in lieu of the minimum 10 feet open space, as required by Chapter 25, Article 4, Section 25-4-44 (a).

The subject property is located at Konahaiki, Lot 13, Kohanaiki, North Kona, Tax Map Key: 7-3-019: 008.

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

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property consists of 8,223 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 885047 in 1987 for a single family dwelling.
  - b. Building Permit No. 885622 in 1988 for a single family dwelling.

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3. A survey map prepared by Wes Thomas Associates on March 6, 1996, shows the EXISTING WALKWAY LANDING with 4.3 to 4.5 feet open space in lieu of the required 10 open space. As such, the subject deck encroaches by 5 feet 6 inches to 5 feet 8 and 3/8 inches into the required 10 feet open space.
4. The homeowners at that time, received all of the necessary Department of Public Works, Building Division approvals for walkway landing.
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 walkway landing in 1987.
6. There appears to have been a construction staking error occurred in 1987 when the walkway landing was 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.
7. It has been over 9 years since the construction of the existing walkway landing 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 walkway landing..
8. The variance application was filed with the Planning Department on November 29, 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 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

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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 walkway landing on the subject property is presently into 5 feet 6 inches to 5 feet 8 and 3/8 inches into the required 10 feet open space. This encroachment into the 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 10 feet open space in this particular case, the encroachment is 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 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 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.


Mr. Klaus Conventz

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Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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xc: West Hawaii Office