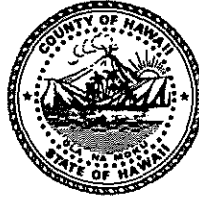


Stephen K. Yamashiro  
Mayor



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 293 080 456

May 19, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR 97-25)  
Variance No. 830  
Applicant: ROBERT S. NACKOWSKI  
Variance from Minimum REAR YARD and Minimum DISTANCE BETWEEN  
MAIN BUILDINGS  
Tax Map Key: 7-6-006: 046

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow two existing main buildings on same building site with a distance of 14.0 feet in lieu of the minimum 15 feet distance; a 22.4 to 24.1 feet rear yard in lieu of the minimum 25 feet rear yard as required by Chapter 25, Article 5, Division 5, Section 25-5-56 (1) and Article 4 Division 4, Section 25-4-47.

The subject property is located at Holualoa 1st and 2nd, Lot B-3, Portion of Allotment 18-19 of Holualoa 1st and 2nd Hui Partition (Makai Section) and R.P. 4475, LC.Aw 7713, Ap. 43 to V. Kamamalu, North Kona, Hawaii, Tax Map Key: 7-6-006: 046.

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 22,646 square feet of land area.
2. The subject single family dwelling was issued the following:

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- a. Building Permit No. 945489 opened on July 5, 1994 and closed on February 11, 1997 for an Ohana dwelling.
  - b. Building Permit No. 945490 opened on July 5, 1994 and closed on January 22, 1996 for a Single Family dwelling.
  - c. Building Permit No. 965289 opened on April 15, 1996 and closed on February 11, 1997 for an addition to loft area.
  - d. Building Permit No. 965454 opened on June 13, 1996 and closed on February 11, 1997 for an additional bath in the loft area.
  - e. Building Permit No. 965655 opened on August 20, 1996 and closed on February 11, 1997 for an balcony addition to loft area.
3. A survey map prepared by Wes Thomas Associates on April 14, 1997, shows the **EXISTING TWO STORY SINGLE FAMILY DWELLING** with a distance of 14.0 feet in lieu of the minimum 15 feet distance between main buildings on the same building site. As such, the subject dwelling encroaches by 1 foot into the required 15 feet between main buildings.
  4. The survey also shows the **EXISTING TWO STORY SINGLE FAMILY DWELLING** with 22.4 to 24.1 feet rear yard in lieu of the minimum 25 feet rear yard. As such, the subject dwelling encroaches by 10 and 7/8 inches to 2 feet 7 and 1/4 inches into the required 25 feet rear yard.
  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 in 1996.
  7. There appears to have been a construction error occurred in 1996 when the dwelling was constructed on the property. No other evidence has been found to show otherwise.
  8. It has been over 2 years since the construction of the existing dwelling which was approved by the County and the applicant is trying to resolve a situation which they had

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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 April 15, 1997.

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 them. 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 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 dwellings on the subject property encroaches 1 foot into the minimum distance between main buildings on the same site. In addition, the existing dwelling encroaches 10 and 7/8 inches to 2 feet 7 and 1/4 inches into the required 25 feet rear yard. These encroachments into the rear yard and between main buildings 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 25 feet rear yard and 15 feet between main buildings, 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 complies with the minimum yard requirements of the Zoning Code.

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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.

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