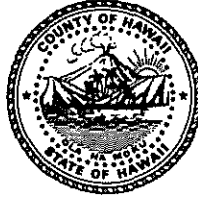


Stephen K. Yamashiro  
Mayor



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 620 315 187

March 11, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR 97-4)

Variance No. 811

Applicant: MATTHEW AND ANGELA LUCK

Variance from Minimum FRONT YARD and OPEN SPACE Requirements

Tax Map Key: 7-3-046:133

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an EXISTING ONE STORY CARPORT with a 17.0 feet front yard in lieu of the minimum 30 feet front yard and a 15.1 feet open space in lieu of the minimum 24 feet open space, as required by Chapter 25, Division 7, Section 25-5-76(a); Division 4, Section 25-4-44(a).

The subject property is located at Kona Acres Subdivision, Lot 20, Unit 2, Increment B, at Ooma 1st, North Kona, TMK: 7-3-046:133.

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

1. The subject property consists of 1.05 acres of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 07061 on September 16, 1985 and closed on October 31, 1989 for construction of a swimming pool.

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3. A survey map prepared by Wes Thomas Associates on January 30, 1997, shows the EXISTING ONE STORY CARPORT with 17.0 feet front yard in lieu of the minimum 30 feet front yard. As such, the subject carport encroaches by 13 feet into the required 30 feet front yard.
4. The survey indicates the EXISTING ONE STORY CARPORT with a 15.1 feet open space in lieu of the minimum 24 feet front yard open space. As such, the carport encroaches by 9 feet 10 and 7/8 inches into the required 24 feet front yard open space.
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 carport in 1985.
6. There appears to have been a construction staking error occurred in 1985 when the carport 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.
7. It has been over 12 years since the construction of the existing carport which was approved by the County and the applicant 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 carport.
8. The variance application was filed with the Planning Department on January 31, 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 the applicant. The investigation of this particular matter has not shown any deliberate or intentional grounds in allowing the encroachments to occur.

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2. Any architectural alterations or design changes to the carport 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 survey map shows the existing carport encroaches by 13 feet into the required 30 feet front yard and 9 feet 10 and 7/8 inches into the required 24 feet front yard open space. These encroachments into the front 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 30 feet front yard and 24 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 detached carport complies with the minimum yard requirements of the Zoning Code.

There were no objections from the general public and 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.

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3. Any encroachments within the County right-of-way shall be removed by the applicant or permitted by the Department of Public Works, Engineering Division.
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

EMM: rld

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xc: West Hawaii Office