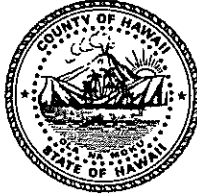


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
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 293 080 420

September 12, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR 97-52)
Variance No. 850
Applicant: KLAUS CONVENTZ
Owners: ARTHUR K. & CASSANDRA S. BELL
Variance from Minimum SIDE YARD Requirements
Tax Map Key: 7-3-014: 074

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After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling with a 6.2 feet side yard in lieu of the minimum 8 feet side yard as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B).

The subject property is located in the Kona Macadamia Acres Subdivision, Lot 74, at Kealakehe, North Kona, Hawaii, Tax Map Key: **7-4-014: 074.**

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property consists of 8,365 square feet of land area.

1. The subject single family dwelling was issued the following building permits:
 - a. Building Permits No. 03745 opened in July, 1979 for a single family dwelling and carport.

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2. A survey map prepared by KKM Surveys on July 11, 1997, shows the EXISTING ONE STORY SINGLE FAMILY DWELLING with 6.2 feet side yard in lieu of the minimum 8 feet side yard. As such, the dwelling encroaches by 1 foot 9 and 5/8 inches into the required 8 feet side yard.
3. The homeowners at that time received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
4. When the plans were approved by the Planning Department, the plans would have had to show that all minimum required setbacks were going to adhere to the proposed dwelling in 1979.
5. There appears to have been a construction staking error that occurred in 1979 when the dwelling 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.
6. It has been over 18 years since the construction of the existing dwelling which was approved by the County and the applicants are trying to resolve a situation which they had no control over and has honestly conducted a certified survey to ensure disclosure of all facts concerning the dwelling.
7. The variance application was filed with the Planning Department on July 14, 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 applicants 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 applicants on their own volition are honestly trying to resolve this long standing problem which was not created by the applicants. 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 applicants when other more reasonable options are available.

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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 1 foot 9 and 5/8 inches into the required 8 foot side yard. These encroachments into the side yard will not diminish the ability for adequate light and air to circulate and to provide adequate open space. Therefore, while the Zoning Code requires a minimum 8 foot side yard, in this particular case, the encroachments are relatively minor and 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 and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan; furthermore, this variance 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. Any encroachments within the State or County right-of-way shall be removed as required by Department of Public Works Engineering.

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4. Obtain approval from the Board of Appeals for all Housing and Building Code Violations, if applicable.
5. 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\jkg
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xc: West Hawaii Office