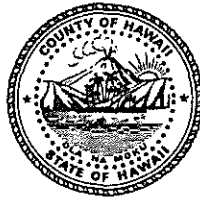


Stephen K. Yamashiro
Mayor



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 293 080 422

September 12, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR 97-49)
Variance No. 851
Applicant: KLAUS CONVENTZ
Owners: EDWARD E. AND KATHLEEN DIXON
Variance from Minimum SIDE YARD and OPEN SPACE Requirements
Tax Map Key: 7-3-038: 001

After reviewing your application and the submittal, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling and carport with a 6.5 to 7.8 feet side yard in lieu of the minimum 8 feet side yard; and a 3.3 feet open space in lieu of the minimum 4 feet open space, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B) and Article 4, Division 4, Section 25-4-44(a).

The subject property is located in the Kona Highlands Subdivision, Section B, Lot 27, at Kalaoa 1st and 2nd, North Kona, Hawaii, Tax Map Key: 7-3-038: 001.

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:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,387 square feet of land area.
2. The subject single family dwelling was issued the following building permit:

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- a. Building Permit No. 772867 opened on December 8, 1977 for the construction of a single family dwelling with attached carport.
 - b. Building Permit No. 885319 opened on April 13, 1988 and closed on July 5, 1988 to construct a family room and lanai.
3. A survey map prepared by Richard Cassera on July 7, 1997 shows the Existing one story single family dwelling with 6.5 to 7.8 feet side yard in lieu of the minimum 8 feet side yard. As such, the dwelling encroaches by 2-3/8 inches to 1 foot 6 inches into the required 8 feet side yard.
 4. The survey map shows the existing one story single family dwelling with a 3.3 open space in lieu of the minimum 4 feet open space. As such, the dwelling encroaches 8- 3/8 inches in the required 4 feet open space.
 5. The homeowner at that time the building permits were approved, received all of the necessary Department of Public Works, Building Division approvals for dwelling and carport.
 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 adhered to for the proposed dwelling in 1977.
 7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1977 when the dwelling and carport were constructed. There also appears to have been very minor siting error with the encroachment at the time of construction. No other evidence has been found to show otherwise.
 8. It has been over 20 years since the construction of the existing dwelling and carport which was approved by the County, and the applicants are trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling.
 9. The variance application was filed with the Planning Department on July 16, 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.

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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.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicants when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring building 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 2-3/8 inches to 1 foot 6 inches into the required 8 feet side yard; and 8-3/8 inches in the required 4 feet open space. These encroachments into the side yard and open space 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 feet side yard and 4 feet open space 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 and carport complies with the minimum yard requirements of the Zoning Code.

There was one objection from a surrounding property owner who stated that the county code is for the benefit and protection of all residents and therefore an exception should not be made to the applicant. There were no objections from any of the participating government agencies.

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.

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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.
4. If applicable, approval from the Board of Appeals for all Housing and Building Code Violations will be obtained.
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
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xc: West Hawaii Office