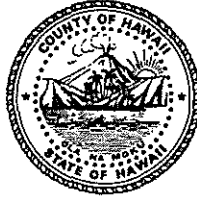


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubui
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 417 379 043

October 20, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR97-56)
Variance No. 862
Applicant: KLAUS CONVENTZ
Owners: FRANK J. VECCHIO AND PEGGY JONES
Variance from Minimum Side Yard, Rear Yard and Open Space Requirements
Tax Map Key: 7-6-020: 071

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, garage and deck with a 7.80 feet side yard in lieu of the minimum 8 feet side yard; 13.7 to 13.9 feet rear yard in lieu of the minimum 15 feet rear yard; and a 6.80 feet open space in lieu of the minimum 10 feet open space, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A) and 25-5-7(a)(1)(B), and Article 4, Division 4 Section 25-4-44(a)(1).

The subject property is located in the Kilohana Subdivision, Lot 71, Unit 1-A at Holualoa 1 & 2, North Kona, Hawaii, Tax Map Key: 7-6-020: 071.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,235 square feet of land area.

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2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 007610 opened in July 22, 1986 and closed on March 27, 1987 for a single family dwelling, carport and lanai.
 - b. Building Permit No. 905188 opened on February 2, 1990 and closed on October 15, 1990 to demolish the existing carport and construct a one bedroom, one bath, open lanai with stairs, new two car garage and repair existing deck.
3. A survey map prepared by KKM Surveys on July 30, 1997, shows the existing one story single family dwelling, garage and deck with a 7.80 feet side yard in lieu of the minimum 8 feet side yard. As such, the dwelling, garage and deck encroaches by 1-1/4 inches into the required 8 feet side yard.
4. The survey map shows the existing one story single family dwelling, garage and deck with a 13.7 to 13.9 feet rear yard in lieu of the minimum 15 feet rear yard. As such, the dwelling, garage and deck encroaches by 1 foot 1-3/8 inches to 1 foot 3- 5/8 inches into the required 15 feet rear yard.
5. In addition the survey map shows the existing one story single family dwelling, garage and deck with a 6.80 feet open space in lieu of the minimum 10 feet open space. As such, the dwelling, garage and deck encroaches by 3 feet 2-3/8 inches into the required 10 feet open space.
6. The homeowners at that time the building permits were approved, received all of the necessary Department of Public Works, Building Division approvals for dwelling, garage and deck.
7. 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 and carport in 1986.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1986 when the dwelling, garage and deck were constructed. 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.
9. It has been over 11 years since the construction of the existing dwelling, garage and deck 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 to disclosure of all facts concerning the dwelling, garage and deck.

10. The variance application was filed with the Planning Department on August 4, 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.

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, garage and deck on the subject property is presently 1-1/4 inches into the required 8 feet side yard; 1 foot 1-3/8 inches to 1 foot 3-5/8 inches into the required 15 feet rear yard; and 3 feet 2-3/8 inches into the required 10 feet open space. These encroachments into the side yard, rear yard and open space will not diminish the ability for adequate light and air to circulate and to provide for adequate open space. Therefore, while the Zoning Code requires a minimum 8 feet side yard, 15 feet rear yard, and 10 feet open space, in this particular case, the encroachments are relatively minor that will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this

Mr. Klaus Conventz

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variance. The rest of the existing dwelling and carport 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 Building Division.
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.

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

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xc: West Hawaii Office