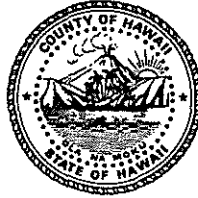


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubu
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 417 379 045

October 21, 1997

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

Dear Mr. Conventz:

Variance Application WH(VAR97-59)
Variance No. 864
Applicant: KLAUS CONVENTZ
Owner: HORST AND HELGA BRUER
Variance from Minimum Side Yard, Rear Yard and Open Space Requirements
Tax Map Key: 7-3-033: 104

After reviewing your application and the submittal, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling, carport and open deck with a 9.92 feet side yard in lieu of the minimum 10 feet side yard; 14.74 to 17.23 feet rear yard in lieu of the minimum 20 feet rear yard; and 12.43 feet open space in lieu of the minimum 14 feet open space, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A) and 25-5-7(a)(2)(B), and Article 4, Division 4, Section 25-4-44(a)(1).

The subject property is located in the Kona Palisade Subdivision, Unit 2, Lot 104, F.P. 1087, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-033: 104.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 12,308 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
 - a. Building Permit No. 008827 opened on December 3, 1987 and closed on May 11, 1988 for the construction of a single family dwelling and carport.

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- b. Building Permit No. 885360 opened on April 25, 1988 and closed on May 11, 1988 for the installation of a bar sink.
3. A survey map prepared by Don McIntosh Consulting on August 29, 1997, shows the existing one story single family dwelling and open deck with 9.92 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling and open deck encroaches by 1 inch into the required 10 feet side yard.
4. A survey map shows the existing one story single family dwelling and carport with 14.74 to 17.23 feet rear yard in lieu of the minimum 20 feet rear yard. As such, the dwelling and carport encroaches by 2 feet 9-1/4 inches into the required 20 feet rear yard.
5. In addition the survey map shows the existing one story single family dwelling and carport with 12.43 feet rear yard open space in lieu of the minimum 14 feet open space. As such, the dwelling and carport encroaches by 1 feet 6-7/8 inches into the required 14 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, carport and open 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, carport and open deck in 1987.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1987 when the dwelling, carport and open 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 10 years since the construction of the existing dwelling, carport and open 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 the disclosure of all facts concerning the dwelling, carport and open deck.
10. The variance application was filed with the Planning Department on September 5, 1997.

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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.
2. Any architectural alterations or design changes to the dwelling, carport and open deck 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, carport and open deck on the subject property is presently 1 inch into the required 10 feet side yard. The dwelling and carport encroaches by 2 feet 9-1/4 inches into the required 20 feet rear yard and 1 feet 6-7/8 inches into the required 14 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 adequate open space. Therefore, while the Zoning Code requires a minimum 10 feet side yard, 20 feet front yard and 14 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, carport and open deck 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.

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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. If applicable, approval from the Board of Appeals for all Housing and Building Code Violations will be obtained.
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