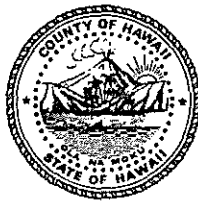


Stephen K. Yamashiro  
Mayor



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) 961-8742

**CERTIFIED MAIL**  
**P 417 379 077**

January 29, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR97-76)  
Variance No. 878  
Applicant: KLAUS CONVENTZ  
Owner: FRANK COSTANZO TRUST  
Variance from Minimum Front and Rear Yard Requirements  
Tax Map Key: 7-3-041:016

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling with a 19.7 to 19.8 feet front yard in lieu of the minimum 20 feet front yard and a 19.8 feet rear yard in lieu of the minimum 20 feet rear yard, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is located in Kona Palisade Subdivision, Unit III, Lot 117, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-041:016.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,150 square feet of land area.
2. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 003660 issued on July 31, 1979 for the construction of a single family dwelling.
  - b. Building Permit No. 792604 issued on October 1, 1979 for an addition to the single family dwelling structure.
  - c. Building Permit No. 007097 opened on October 10, 1985 and closed on October 13, 1985 for a storage.
3. A survey map prepared by KKM Surveys on October 3, 1997, shows the existing one story single family dwelling with a 19.7 to 19.8 feet front yard in lieu of the minimum 20 feet front yard. As such the dwelling encroaches 2-3/8 to 3-3/8 inches into the required 20 feet front yard.
  4. The survey map shows the existing one story single family dwelling with a 19.8 feet rear yard in lieu of the minimum 20 feet rear yard. As such, the dwelling encroaches by 2-3/8 inches into the required 20 feet rear yard.
  5. At the time the building permits were approved, the owners received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
  6. When approved by the Planning Department, the plans would have had to have shown that all minimum required setbacks were going to be adhered to for the proposed dwelling in 1979.
  7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1979 when the dwelling was constructed. There also appears to have been a very minor siting error at the time of construction with regard to encroachments. No other evidence has been found to show otherwise.
  8. It has been over 18 years since the construction of the existing dwelling was approved by the County, and the owners 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 October 13, 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 applicants on their own volition are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not revealed 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 for the applicants when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands being 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 to 3-3/8 inches into the required 20 feet front yard. In addition the dwelling encroaches by 2-3/8 inches into the required 20 feet rear yard. These encroachments into the front and rear yard will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 20 feet front yard and 20 feet rear 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 area's character and to adjoining properties.

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This variance request is approved, subject to the following conditions:

1. The owner, 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 Building Code Violations will be obtained.
4. The owner shall remove any encroachments within the County right-of-way, including the CRM wall, or obtain approval from the Department of Public Works, Engineering Division.
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

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xc: West Hawaii Office