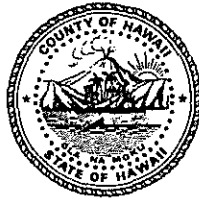


Stephen K. Yamashiro
Mayor



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 417 379 080

January 28, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR97-81)
Variance No. 881
Applicant: KLAUS CONVENTZ
Owner: DE ETTE B. AND SCOTT D. SUMNER TRUST
Variance from Minimum Rear Yard Open Space Requirements
Tax Map Key: 7-6-020:014

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing two story single family dwelling with a 5.7 to 8.1 feet rear yard open space in lieu of the minimum 10 feet rear yard open space as required by Chapter 25, Article 4, Division 4, Section 25-4-44(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 Kilohana Subdivision, Unit 1-A, Lot 14, at Holualoa 1 & 2, North Kona, Hawaii, Tax Map Key: 7-6-020:014

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 7,501 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. 003966 opened on November 15, 1979 and closed on June 19, 1980 for the construction of a single family dwelling, garage and deck.
- b. Building Permit No. 005285 opened on January 27, 1982 and closed on May 3, 1982 for the construction of an open deck.
3. A survey map prepared by KKM Surveys on October 13, 1997, shows the existing two story single family dwelling with a 5.7 to 8.1 feet rear yard open space in lieu of the minimum 10 feet rear yard open space. As such the dwelling encroaches 1 foot 10-7/8 inches to 4 feet 3-5/8 inches into the required 10 feet open space.
4. 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 and deck.
5. 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 and the deck in 1982.
6. 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 made at the time of construction with regard to the encroachments. No other evidence has been found to show otherwise.
7. 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.
8. The variance application was filed with the Planning Department on October 15, 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 owners 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 solutions available without excessive demands being placed on the owners 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 1 foot 10-7/8 inches to 4 feet 3-5/8 inches into the required 10 feet open space. This encroachment into the open space 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 10 feet open space in this particular case, the encroachment is 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, or obtain appropriate approval from the Department of Public Works, Engineering Division.
5. The owner shall receive approval from the Department of Public Works, Building Division for all unpermitted building additions.
6. 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