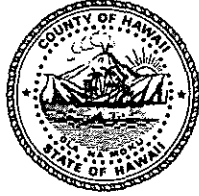


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

CERTIFIED MAIL

P 417 379 081

January 29, 1998

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

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

Dear Mr. Conventz:

Variance Application WH(VAR97-82)

Variance No. 882

Applicant: KLAUS CONVENTZ

Owner: MARY LOU CRITCHER

Variance from Minimum Side Yard and Open Space Requirements

Tax Map Key: 7-7-013:015

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 and attached carport with a 2.9 feet side yard in lieu of the minimum 10.0 feet side yard and a 2.0 to 2.2 feet side yard open space in lieu of the minimum 5.0 feet open space, as required by Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B) and 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 the Sunset View Terrace Lots, Unit II, Lot 13, at Holualoa 4th, North Kona, Hawaii, Tax Map Key: 7-7-013:015.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,000 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. 48008 issued in 1971 for the construction of a single family dwelling.
 - b. Building Permit No. 005662 opened on November 10, 1982 and closed on January 25, 1982 for a swimming pool.
3. A survey map prepared by KKM Surveys on October 28, 1997, shows the existing one story single family dwelling and attached carport with a 2.9 feet side yard in lieu of the minimum 10.0 feet side yard. As such the dwelling encroaches 7 feet 1-1/4 inch into the required 10 feet side yard.
 4. The survey map shows the existing one story single family dwelling and attached carport with a 2.0 to 2.2 feet side yard open space in lieu of the minimum 5.0 feet side yard open space. As such, the dwelling encroaches by 2 feet 9-5/8 inches to 3 feet into the required 5 feet open space.
 5. When the building permit for the single family dwelling was approved, the homeowner 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 1971.
 7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1971 when the dwelling was constructed. There also appears to have been that a very minor siting error made at the time of construction with the encroachments. No other evidence has been found to show otherwise.
 8. It has been over 26 years since the construction of the existing dwelling which was approved by the County, and the owner is trying to resolve a situation which she had no control over and has 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 29, 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

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available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

1. The owner on her own volition is honestly trying to resolve this long standing problem which was not created by herself. 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 applicant 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 buildings 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 7 feet 1-1/4 inch into the required 10 feet side yard. In addition the dwelling encroaches by 2 feet 9-5/8 inches to 3 feet into the required 5 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 will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 10 feet side yard and 5 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 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 apply and receive approvals for all applicable building permits for the unpermitted additions.
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,


for VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office