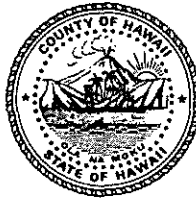


Stephen K. Yamashiro
Mayor



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 417 379 084

January 28, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR97-83)
Variance No. 884
Applicant: KLAUS CONVENTZ
Owner: RONALD AND SANDRA HIRATA
Variance from Minimum Side Yard, Rear Yard and Open Space Requirements
Tax Map Key: 7-5-009: 039

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 commercial building with the following characteristics: 1) 8.1 to 9.4 and 9.7 feet side yard in lieu of the minimum 10 feet side yard; 2) 4.7 feet side yard open space in lieu of the minimum 5 feet side yard open space; 3) 15.2 feet rear yard in lieu of the minimum 20 feet rear yard; and 4) 6.7 to 10.3 feet rear yard open space in lieu of the minimum 14 feet rear yard open space, as required by Chapter 25, Article 5, Division 9, Section 25-5-96(1)(2) 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 at Puaa 2nd, being a portion of Grant 7489, Apana 2, to Waahila, North Kona, Hawaii, Tax Map Key: 7-5-009: 039.

1. The subject property consists of 23,373 square feet of land area.

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2. The subject existing two story commercial building was issued the following building permits:
 - a. Building Permit No. 18353 issued in 1953 for the construction of the commercial building.
 - b. Building Permit No. 31869 issued in 1965 for an addition to the commercial building.
 - c. Building Permit No. 841701 opened on September 20, 1984 and closed on September 20, 1984 for an alteration to the commercial building.
 - d. Building Permit No. 007312 opened on February 19, 1984 and closed on March 10, 1986 for an alteration to the commercial building.
3. A survey map prepared by KKM Surveys on September 10, 1997, shows the existing two story commercial building with a 8.1 to 9.4 and 9.7 feet side yard in lieu of the minimum 10 feet side yard. As such the building encroaches 3 -5/8 inches and 7-1/4 inches to 1 foot 10-7/8 inches into the required 10 feet side yard.
4. The survey map shows the existing two story commercial building with a 4.7 feet side yard open space in lieu of the minimum 5 feet side yard open space. As such, the building encroaches by 3-5/8 inches into the required 5 feet open space.
5. The survey map shows the existing two story commercial building with a 15.2 feet rear yard in lieu of the minimum 20 feet rear yard. As such, the building encroaches by 4 feet 9-5/8 inches into the required 20 feet rear yard.
6. The survey map shows the existing two story commercial building with a 6.7 to 10.3 feet rear yard open space in lieu of the minimum 14 feet rear yard open space. As such, the building encroaches by 3 feet 8-3/8 inches to 7 feet 3-5/8 inches into the required 14 feet open space.
7. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the building.
8. 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 building in 1953.

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9. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1953 when the building was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachments. No other evidence has been found to show otherwise.
10. It has been over 44 years since the construction of the existing building which 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 building.
11. 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 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 building 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 buildings setbacks is to assure that adequate air and light circulation is available between structures and property lines. The existing building on the subject property is presently 3 -5/8 inches and 7-1/4 inches to 1 foot 10-7/8 inches into the required 10 feet side yard. The building encroaches 3-5/8 inches into the required 5 feet side

yard open space. In addition the building encroaches by 4 feet 9-5/8 inches into the required 20 feet rear yard and 3 feet 8-3/8 inches to 7 feet 3-5/8 inches into the required 14 feet rear yard 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 will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 10 feet side yard, 5 feet side yard open space, 20 feet rear yard and 14 feet rear yard 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 building 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.

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

1. The owners, 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 owners shall remove any encroachments within the County right-of-way including the rock wall on Alii Drive.
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,

A handwritten signature in black ink, appearing to read "Russell Kolub". The signature is fluid and cursive, with a long horizontal stroke at the end.

for VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office