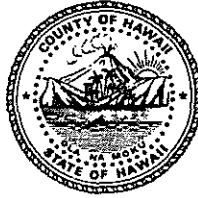


Stephen K. Yamashiro
Mayor



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 417 370 096

July 24, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR 98-035)
Variance No. 939
Applicant: KLAUS D. CONVENTZ
Owners: ALBERT B. AND NAOMI WEAKLEY
Request: Variance From Minimum Rear Yard and Side Yard Requirements
Tax Map Key: 7-7-020: 027

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 attached garage with a 19.8 to 19.9 feet rear yard in lieu of the minimum 20 feet rear yard and a 9.0 to 9.6 feet in lieu of the minimum 10 feet side yard, as required by Ordinance No. 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(B), Ordinance No. 97-88.

The subject property is located at Kalani Sunset Subdivision, Lot 27, Being a Portion of Grant 1591 to Hoolawaihonua at Holualoa 3rd, North Kona, Hawaii, Tax Map Key:7-7-020:027.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,043 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 7817 opened on November 6, 1986 and closed on May 11, 1998 for the construction of a rock wall.

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- b. Building Permit No. 7901 opened on December 17, 1986 and closed on November 1, 1988 for the construction of a dwelling.
 - c. Building Permit No. 8138 opened on April 1, 1987 and closed on October 21, 1987 for the construction of a swimming pool.
3. A survey map prepared by Wes Thomas Associates, on May 26, 1998, shows the existing two story single family dwelling with attached garage with a 19.8 to 19.9 feet rear yard in lieu of the minimum 20 feet rear yard. As such the dwelling encroaches 1-1/4 inches to 2-3/8 inches into the required 20 feet rear yard.
 4. The survey map shows the existing one story single family dwelling with attached garage with a 9.0 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling encroaches 1 foot into the required 10 feet side yard.
 5. When the building permit was approved, the owner 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 dwelling in 1986.
 7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1986 when the dwelling was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
 8. It has been over 12 years since the construction of the existing dwelling 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.
 9. The variance application was filed with the Planning Department on May 28, 1998.

There were no objections from any of the participating government agencies or any surrounding property owners.

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 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 buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling encroaches 1-1/4 inches to 2-3/8 inches into the required 20 feet rear yard and 1 foot into the required 10 feet side yard. These encroachments into the rear yard and side 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 rear yard and 10 side yard, in this particular case, the encroachments 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.

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. 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