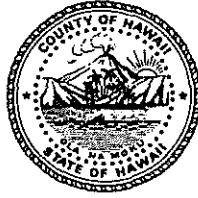


Stephen K. Yamashiro  
Mayor



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 417 370 135

September 4, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR 98-044)

Variance No. 949

Applicant: KLAUS D. CONVENTZ

Owner: JANE C. DIERENFIELD TRUST

Request: Variance From Minimum Front Yard and Open Space Requirements

Tax Map Key: 7-5-020: 051

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 two story garage with a 14.60 feet front yard in lieu of the minimum 15 feet front yard, a 9.07 feet open space in lieu of the minimum 10 feet open space and a 2.80 feet side yard open space in lieu of the minimum 4 feet open space, as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A), and Ordinance 97-88, and Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located at Puapuaa, being a Portion of R.P. 6716, L.C. Award 4887, to Thomas Sams at Puapuaa 1st, North Kona, Hawaii, 7-5-020: 051.

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.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,791 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 2008 opened on August 3, 1976 and closed on December 7, 1976 for the construction of a garage.
  - b. Building Permit No. 2009 opened on September 13, 1976 and closed on December 7, 1976 for the construction of a dwelling.
  - c. Building Permit No. 4080 opened on January 29, 1980 and closed on June 16, 1980 for an addition to the garage.
3. A survey map prepared by Wes Thomas Associates, on June 23, 1998, shows the existing one story single family dwelling and two story garage with a 14.60 feet front yard in lieu of the minimum 15 feet front yard. As such the dwelling and garage encroach 4-7/8 inches into the required 15 feet front yard.
4. The survey map shows the existing one story single family dwelling and two story garage with a 9.07 feet open space in lieu of the minimum 10 feet open space. As such the dwelling and garage encroach 11-1/8 inches into the required 10 feet open space.
5. The survey map shows the existing one story single family dwelling and two story garage with a 2.80 feet side yard open space in lieu of the minimum 4 feet open space. As such the dwelling and garage encroach 1 foot 2-3/8 inches into the required 4 feet side yard open space.
6. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and garage.
7. 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 and garage in 1976.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1976 when the dwelling and garage were constructed. There also appears to have been a very minor siting error made at the time of

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construction with the encroachment. No other evidence has been found to show otherwise.

9. It has been over 22 years since the construction of the existing dwelling and garage were approved by the County, and the applicant is 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 and garage.
10. The variance application was filed with the Planning Department on July 2, 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 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 and garage 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 and garage encroach 4-7/8 inches into the required 15 feet front yard, 11-1/8 inches into the required 10 feet open space and 1 foot 2-3/8 inches into the required 4 feet side

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yard open space. These encroachments into the front 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 15 feet front yard, 10 feet front yard open space and 4 feet side yard open space, 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 and garage 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.

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. Any improvements within the flood zone require a detailed flood study by a licenced civil engineer and compliance with the Federal Emergency Management Agency (FEMA) regulations.
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.

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Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
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xc: West Hawaii Office