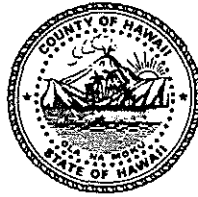


Stephen K. Yamashiro  
Mayor



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 417 370 134

September 4, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR 98-045)  
Variance No. 950  
Applicant: KLAUS D. CONVENTZ  
Owners: AIJIRO AND KUMIKO WAKITA  
Request: Variance From Minimum Side Yard, Rear Yard and Open Space  
Requirements  
Tax Map Key: 8-2-009:101

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 detached carport, with a 17.05 feet side yard in lieu of the minimum 20 feet side yard, a 24.50 to 25.89 feet rear yard in lieu of the minimum 30 feet rear yard, a 12.18 feet side yard open space in lieu of the minimum 14 feet open space, and a 20.93 to 22.68 feet rear yard open space in lieu of the minimum 24 feet open space, as required by Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-76(a) and Ordinance 97-88, Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located at Lot 25, McKoy Plantation Subdivision, at Kalamaumi, South Kona, Hawaii, Tax Map Key: 8-2-009:101.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.00 acres of land area.
2. The subject single family dwelling was issued the following building permits:

08447

SEP 08 1998

Mr. Conventz  
Page 2  
September 4, 1998

- a. Building Permit No. 895368 opened on March 28, 1989 and closed on May 8, 1990 for the construction of a dwelling.
  - b. Building Permit No. 896136 opened on August 24, 1989 and closed on May 8, 1990 for the construction of a garage.
2. A survey map prepared by Don McIntosh Consulting, on July 1, 1998, shows the existing one story single family dwelling and detached carport with a 17.05 feet side yard in lieu of the minimum 20 feet side yard. As such the dwelling and carport encroach 2 feet 11-3/8 inches into the required 20 feet side yard.
  3. The survey map shows the existing one story single family dwelling and detached carport, with a 24.50 to 25.89 feet rear yard in lieu of the minimum 30 feet rear yard. As such the dwelling and carport encroach 4 feet 1-3/8 inches into the required 30 feet rear yard.
  4. The survey map shows the existing one story single family dwelling and detached carport, with a 12.18 feet side yard open space in lieu of the minimum 14 feet open space. As such the dwelling and carport encroach 1 foot 9-7/8 inches into the required 14 feet side yard open space.
  5. The survey map shows the existing one story single family dwelling and detached carport, with a 20.93 to 22.68 feet rear yard open space in lieu of the minimum 24 feet open space. As such the dwelling and carport encroach 1 foot 3-7/8 inches to 3 feet 7/8 inches into the required 24 feet rear 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 carport.
  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 carport in 1989.
  8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1989 when the dwelling and carport 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 shown otherwise.
  9. It has been over 9 years since the construction of the existing dwelling and carport were approved by the County, and the applicants are trying to resolve a situation which

Mr. Conventz  
Page 3  
September 4, 1998

they had no control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and carport.

10. The variance application was filed with the Planning Department on July 8, 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 carport 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 carport encroach 2 feet 11-3/8 inches into the required 20 feet side yard, 4 feet 1-3/8 inches into the required 30 feet rear yard, 1 foot 9-7/8 inches into the required 14 feet side yard open space and 1 foot 3-7/8 inches to 3 feet 7/8 inches into the required 24 feet rear yard open space. These encroachments into the side yard, rear yard, side yard open space, and rear yard 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 20 feet side yard, 30 feet rear yard, 14 feet side yard open space, and 24 feet rear yard open space, in this particular case, the encroachments will not visually or

Mr. Conventz  
Page 4  
September 4, 1998

physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing dwelling and carport 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. 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

EMM: rld  
a:\82009101\vwakita.app  
xc: West Hawaii Office