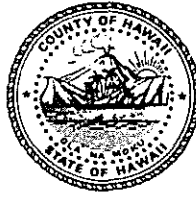


Stephen K. Yamashiro  
Mayor



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 417 370 158

October 23, 1998

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

Dear Mr. Conventz:

Variance Application WH(VAR 98-057)  
Variance No. 964  
Applicant: KLAUS D. CONVENTZ  
Owner: KLAUS D. HUEBNER  
Request: Variance From Minimum Front Yard, Side Yard and Open Space  
Requirements  
Tax Map Key: 7-3-029: 036

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 single family dwelling and attached garage with a 15.3 to 17.5 feet front yard in lieu of the minimum 20 feet front yard, a 9.4 to 9.9 feet side yard in lieu of the minimum 10 feet side yard and a 13.7 feet front yard open space in lieu of the minimum 14 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(B) and Article 4, Division 4, Section 25-4-44(a) Ordinance 97-88.

The subject property is located at Kona Palisades, Lot 36, Unit 1, at Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-029: 036.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property consists of 10,482 square feet of land area.
2. The subject single family dwelling was issued the following building permit:

**009919**

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- a. Building Permit No. 965897 opened on October 22, 1996 and closed on July 1, 1998 for the construction of a dwelling and attached garage.
3. A survey map prepared by Wes Thomas Associates on August 11, 1998, shows the existing two story single family dwelling and attached garage with a 15.3 to 17.5 feet front yard in lieu of the minimum 20 feet front yard. As such the dwelling and attached garage encroach 2 feet 6 inches to 4 feet 8-3/8 inches into the required 20 feet front yard.
4. The survey map shows the existing two story single family dwelling and attached garage with a 9.4 to 9.9 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling and attached garage encroach 1-1/4 inches to 7-1/4 inches feet into the required 10 feet side yard.
5. The survey map shows the existing two story single family dwelling and attached garage with 13.7 feet front yard open space in lieu of the minimum 14 feet open space. As such the dwelling and attached garage encroach 3-5/8 inches into the required 14 feet 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 attached 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 attached garage in 1996.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1996 when the dwelling and attached garage were 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.
9. It has been over 3 years since the construction of the existing dwelling and attached garage were approved by the County, and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and attached garage.
10. The variance application was filed with the Planning Department on August 24, 1998.

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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 owner on his own volition is honestly trying to resolve this long standing problem which was not created by him. 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 attached 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 attached garage encroach 2 feet 6 inches to 4 feet 8-3/8 inches into the required 20 feet front yard, 1-1/4 inches to 7-1/4 inches feet into the required 10 feet side yard and 3-5/8 inches into the required 14 feet open space. These encroachments into the front yard, 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 20 feet front yard, 10 feet side yard and 14 feet 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 attached garage comply 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

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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 encroachments within the County right-of-way shall be removed.
5. The driveway shall comply with the requirements of Chapter 22 of the Hawaii County Code.
6. 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:\73029036\vhuebner.app  
xc: West Hawaii Office