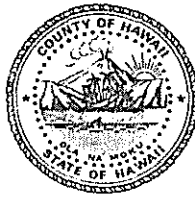


Stephen K. Yamashiro  
Mayor



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  
Z 188 432 614

May 17, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-004)<sup>011</sup>  
Variance No. 1004  
Applicant: KLAUS D. CONVENTZ  
Owner: JEAN K. DAIKER FAMILY TRUST  
Request: Variance From Minimum Front Yard and Open Space Requirements  
Tax Map Key: 7-8-014: 054

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 with guest house, garage, decks, and rock wall with a 13.8 feet front yard in lieu of the minimum 15 feet front yard and a 3.3 feet side yard open space in lieu of the minimum 4 feet side yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-7(a)(2)(A)(B) and Article 4, Section 25-4-44(a), Ordinance 97-88.

The subject property is located at Lot 2, Kahaluu Beach Lots, Being a Portion of R.P. 6856, L.C. Aw. 7713, Ap. 6 to V. Kamamahu, at Kahaluu, North Kona, Hawaii,  
Tax Map Key: 7-8-014: 054.

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 15,682 square feet of land area.
2. The subject property is part of the Kahaluu Beach Lots.
3. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 20388 opened on April 23, 1958 and closed on October 8, 1958 for the construction of a beach house.
  - b. Building Permit No. 22781 opened on March 21, 1960 and closed on December 14, 1960 for a bedroom and bath addition.
  - c. Building Permit No. 32072 opened on October 12, 1965 and closed on December 16, 1965 for a bedroom and bath addition.
  - d. Building Permit No. 51675 opened on March 21, 1972 for the construction of a garage.
  - e. Building Permit No. 52089 opened on March 25, 1972 for an alteration to the dwelling.
  - f. Building Permit No. 895779 opened on June 28, 1989 and closed on July 25, 1989 for the demolition of the deck.
  - g. Building Permit No. 895000 opened on August 11, 1989 and closed on July 25, 1990 for the addition to the dwelling.
  - h. Building Permit No. 905590 opened on April 20, 1990 and closed on July 25, 1990 for the construction of a dormer to the dwelling.
4. A survey map prepared by Wes Thomas and Associates on January 4, 1999, shows the existing two story single family dwelling with guest house, garage, decks and rockwall with a 13.8 feet front yard in lieu of the minimum 15 feet front yard. As such, the dwelling with guest house, garage, decks and rockwall encroach 1 foot 2-3/8 inches into the required 15 feet front yard.
5. The survey shows the existing two story single family dwelling with guest house, garage, decks and rockwall with a 3.3 feet side yard open space in lieu of the minimum

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- 4 feet open space. The roof overhang encroaches 8-3/8 inches into the required 4 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 with guest house, garage, decks and rockwall.
  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 in 1958.
  8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1958 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.
  9. It has been over 43 years since the construction of the existing dwelling and improvements 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 improvements.
  10. The variance application was filed with the Planning Department on March 15, 1999.

There were no objections from any adjacent or 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.

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2. Any architectural alterations or design changes to the dwelling 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 building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling with guest house, garage, decks and rockwall encroach 1 foot 2-3/8 inches into the required 15 feet front yard and the roof overhang encroaches 8-3/8 inches into the required 4 feet 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 and 4 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 with guest house, garage, decks and rockwall 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. Any encroachments within the County right-of-way shall be removed.

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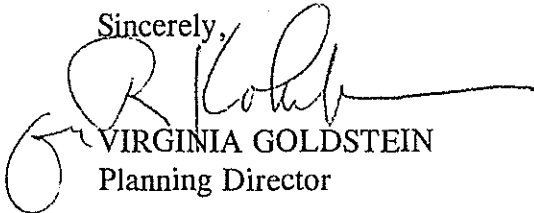
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4. Any construction must comply with Chapter 27 of the Hawaii County Code.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

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