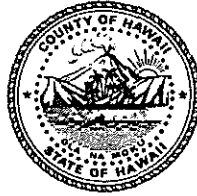


Stephen K. Yamashiro
Mayor



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 188 432 615

June 8, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-012)
Variance No. 1005
Applicant: KLAUS D. CONVENTZ
Owners: ROBERT S. AND MARTY C. DEAN
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-4-007: 079

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 attached garage with a 17.8 to 19.6 feet side yard in lieu of the minimum 20 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-76(a) Ordinance 97-88. Tax Map Key: 7-4-007: 079.

The subject property is located at Lot E-2, CPR Unit 2 of Lopakatu Condominium Project, at Papaakoko, North Kona, Hawaii, Tax Map Key: 7-4-007: 079.

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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.589 acres of land area.

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2. The subject property is part of the Lopakatu condominium project. The applicant's lot consists of 16,335 square feet.
3. The following building permits have been issued:
 - a. Building Permit No. 915540 opened on May 8, 1991 and closed on April 20, 1992 for the construction of a one story single family dwelling.
 - b. Building Permit No. 915997 opened on August 15, 1991 and closed on March 27, 1992 for the construction of an Ohana Dwelling.
 - c. Building Permit No. 916402 opened on October 16, 1991 for the construction of a swimming pool. The permit remains open.
 - d. Building Permit No. 925562 opened on April 13, 1992 and closed on April 21, 1992 for a alteration.
 - e. Building Permit No. 995408 opened on April 15, 1999 for a storage shed. The permit remains open.
4. A survey map prepared by Wes Thomas and Associates on February 24, 1999, shows the existing one story single family dwelling and attached garage with a 17.8 feet to 19.6 feet side yard in lieu of the minimum 20 feet side yard. As such the dwelling encroaches 4-7/8 inches to 2 feet 2-3/8 inches into the required 20 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 1991.
7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1991 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 8 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

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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 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.
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 4-7/8 inches to 2 feet 2-3/8 inches into the required 20 feet side yard. These encroachments into the 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 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.

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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.

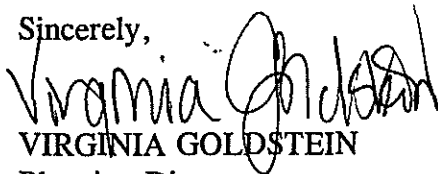
This variance request is approved, subject to the following conditions:

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. 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 Eleanor Mirikitani of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
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xc: West Hawaii Office