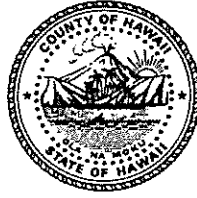


Stephen K. Yamashiro
Mayor



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 188 432 618

June 8, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-013)
Variance No. 1006
Applicant: KLAUS D. CONVENTZ
Owner: KITTY L. HATFIELD-LYONS
Request: Variance From Minimum Side Yard Requirements
Tax Map Key: 7-9-003: 020

We regret to inform you that after reviewing your application and the additional information submitted, the Planning Director hereby denies the approval of your variance request to allow a proposed single family dwelling and accessory structures with a 10.0 to 12.0 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.

Please accept our sincere apologies for this tardy response for the denial of 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.

The subject property is located at a Portion of Royal Patent 2804, L.C. Aw. 7958, Apana 1 to Keliinohokaha, at Honalo-Kawanui, North Kona, Hawaii, Tax Map Key: 7-9-003: 020.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 25,743 square feet of land area.

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2. A scale-drawn plot map of the property shows the proposed single family dwelling and accessory structures with a 12.0 feet side yard (fronting the roadway access) in lieu of the minimum 20 feet side yard. As such the proposed dwelling would encroach 8 feet into the required 20 feet side yard.
3. The plot map shows the proposed single family dwelling and accessory structures with a 10.0 feet side yard in lieu of the minimum 20 feet side yard (on the north side utility easement). As such the proposed dwelling would encroach 10 feet into the required 20 feet side yard.
4. The plot map indicates an existing access and utility easement which is 12 feet wide and traverses over and across the property from east to west.
5. The applicant states that the buildable area varies from 15 feet along the front west boundary and approximately 25 feet along the rear east boundary of the property. This leaves 20 feet of very marginal building area.
6. The variance application was filed with the Planning Department on March 15, 1999.

There were no objections from any adjacent or surrounding property owners.

The property is zoned Agricultural-1a and is irregular in shape. The topography of the land is slightly sloping, with single family dwelling and vacant lands surrounding the property.

The Planning Department has determined that the parcel is a Flag Lot. Section 25-4-14 Flag lots states: A flag lot shall be permitted when sufficient street frontage is not available for more than one building site, provided the minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.

Section 25-4-30 (e) Minimum street frontage states: No street frontage shall be required for any building site where access to the building site is by means of a roadway easement.

Therefore, the minimum setback requirements for the parcel is 20 feet.

The owner was aware of the property's topography and its inherent building constraints including the 12 feet wide access and utility easement which follows along the existing road from the Old Government Road to the subject parcel of land. However, the applicant's efforts to construct a suitable single family dwelling have been frustrated by the shape of the parcel and the zoning requirements.

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The soils within the project area are classified by the U.S. Department of Agriculture, Soil Conservation Service, as Kaimu, extremely stony peat. The Kaimu series consists of thin well drained organic soils over a'a lava on Mauna Loa. In a representative profile, the surface layer is very dark brown, extremely stony peat about 3 inches thick. Permeability is moderately rapid, runoff is slow and erosion hazard is slight. They are moderately to steep slopes. Elevation is approximately 1,200 feet above mean sea level. The soil is appropriate for pasture, macadamia nuts, papaya and citrus fruits. Due to the shallow, rocky soils and arid climate, the soils are suitable for mainly pasture.

The property is "Unclassified " on the State Department of Agriculture's, Agricultural Lands of Importance to the State of Hawaii (ALISH) Map.

Soils within the subject property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau.

The applicant has not provided any information regarding the hardship, special or unusual circumstances applying to the subject real property. This prevents consideration of alternatives to be implemented.

Therefore, considering the foregoing facts, the Planning Director has determined that there are no 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. There are reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicant include : A) Consider design alternatives to conform to the contours of the land or B) Acquiring additional property from the adjacent parcel.
2. Any architectural designs for the proposed dwelling to conform with the minimum setbacks would no create undue and excessive hardships for the applicant, whereas the expense to acquire additional property appears to be remote and economically unreasonable.
3. The applicants ability to comply with the minimum setback requirements is available without a variance, although it will involve costs for the applicant, it is not expected to be an unreasonable option due to the circumstance.

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The Zoning Code is applied and administered within the framework of the general plan which is a long range, comprehensive, general plan prepared to guide the overall future development of the County. Within this frame work, the Zoning Code purpose is to promoting health, safety, morals, or the general welfare of the County, and regulate and restrict the height, size of buildings, other structures, the percentage of a building site that may be occupied, off-street parking, setbacks, size of yards, courts, open spaces, density of population, location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

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 Zoning Code requires a minimum 20 feet side yard requirement, in this particular case, the proposed setbacks will protrude 8 feet to 10 feet into the required 20 feet side yard and will visually and physically impact or be adverse to any adjacent properties or development with the granting of this variance.

Based on the above cited considerations, there are reasonable solutions available without excessive demands being placed on the owner.

The Planning Director recognizes the desire of people who wish to construct a single family dwelling and related structures on their properties. However for the Planning Director to support this particular request in light of the deficiencies noted above would not be consistent with the general purpose of the zoning district and, the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan; furthermore, this variance will be materially detrimental to the public's welfare and will cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is therefore denied.


The Planning Director's decision is final, except that within thirty days after the date of the written decision, the applicant may appeal such action to the Board of Appeals. Effective March 3, 1999, the Hawaii County Board of Appeals are be required to hear and determine appeals from final decisions of the Planning Director. This is pursuant to a recent amendment to the County Charter as adopted by the voters of the County of Hawaii at the general election held on November 3, 1998.

An application for an appeal to the Board of Appeals is attached for your convenience.

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Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office