

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**  
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June 7, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-027)  
Variance No. 1017  
Applicant: KLAUS D. CONVENTZ  
Owners: RONALD H. AND LESLIE E. BRINKMAN  
Request: Variance From Minimum Side Yard Requirements  
Tax Map Key: 7-6-024: 047

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 with a 9.57 to 9.90 feet side yard in lieu of the minimum 10 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(B), Ordinance 97-88.

The subject property is located at Kuakini Makai Subdivision, Lot 11, Increment 1, F.P. 1921, at Holualoa 1st and 2nd, North Kona, Hawaii, Tax Map Key: 7-6-024: 047.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,091 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 885989 opened on October 19, 1988 and closed on March 19, 1997 for the construction of a single family dwelling.

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- b. Building Permit No. 975112 opened on February 13, 1997 and closed on March 19, 1997 to enclose the covered lanai.
3. A survey map prepared by Don McIntosh Consulting on March 28, 1999, shows the existing one story single family dwelling with a 9.57 to 9.90 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling encroaches 1-1/4 inches to 5-1/8 inches into the required 10 feet side yard.
4. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. 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 1988.
6. There appears to have been a construction staking error in the siting of the structures on the property. This occurred in 1988 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.
7. It has been over 11 years since the construction of the existing dwelling was 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.
8. The variance application was filed with the Planning Department on April 9, 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 encroaches 1-1/4 inches to 5-1/8 inches into the required 10 foot 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 10 foot 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.

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 recorded in the Bureau of Conveyance and a copy of the recorded 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.

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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

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xc: West Hawaii Office