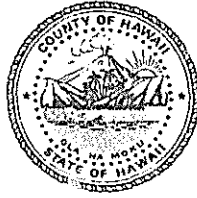


Stephen K. Yamashiro
Mayor



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 188 435 161

June 8, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-019)
Variance No. 1018
Applicant: KLAUS D. CONVENTZ
Owners: NORMAN D. AND KATHLEEN M. WALKER
Request: Variance From Minimum Side Yard, Rear Yard and Open Space
Requirements
Tax Map Key: 7-4-009: 098

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 a 5.08 feet side yard in lieu of the minimum 10 feet side yard; a 10.13 feet rear yard in lieu of the minimum 20 feet rear yard and a 10.13 feet rear 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.

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.

In addition the Planning Director denies the approval of the variance request to allow the existing storage area within the 10 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A), Ordinance 97-88.

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The subject property is located at Kealakehe Homesteads, Lot 4, First Series, at Kealakehe, North Kona, Hawaii, Tax Map Key: 7-4-009: 098.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,023 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 905127 opened on January 23, 1990 and closed on July 11, 1990 for the construction of a single family dwelling, carport and lanai.
 - b. Building Permit No. 905638 opened on April 30, 1990 and closed on July 11, 1990 for rough-in bath on lower level.
 - c. Building Permit No. 925004 opened on January 3, 1992 and closed on May 22, 1992 to enclose lower level for ohana/duplex.
3. A survey map prepared by Don McIntosh Consulting on May 1, 1996 and March 17, 1999, shows the existing two story single family dwelling with a 5.08 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling encroaches 4 feet 11 inches into the required 10 feet side yard.
4. The survey shows the existing two story single family dwelling with a 10.13 feet rear yard in lieu of the minimum 20 feet rear yard. The dwelling encroaches 9 feet 10-1/2 inches into the required 20 feet rear yard.
5. The survey shows the existing two story single family dwelling with a 10.13 feet rear yard open space in lieu of the minimum 14 feet open space. The dwelling encroaches 3 feet 10-1/2 inches into the 14 feet open space.
6. A letter dated March 18, 1999 by Don McIntosh Consulting states: "I have inspected the site (Lot 4) and found that a small storage area (5 X 7) has been added to the property near the Northwest corner of the home since the 1996 Survey. No other changes were noted and the survey map has been updated to show the storage area. The May 9, 1996 Letter and Survey Map is still correct except for the addition shown on the Revised Map dated March 17, 1999 and noted above."
7. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.

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8. 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 1990.
9. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1990 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.
10. It has been over 9 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.
11. The variance application was filed with the Planning Department on March 22, 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 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.

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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 4 feet 11 inches into the required 10 feet side yard, 9 feet 10-1/2 inches into the required 20 feet rear yard and 3 feet 10-1/2 inches into the 14 feet open space. These encroachments into the side yard, rear 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 10 feet side yard, 20 feet rear 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 Planning Director denies the approval of the variance request to allow the existing storage area with the minimum 10 feet side yard. There are no records filed with the Department of Public Works, Building Division for the construction of the storage shed.

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 with the Bureau of Conveyances and the recorded copy shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. The storage area shall be removed by the applicant.
4. 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.


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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