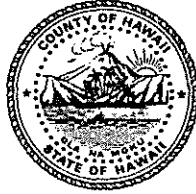


Stephen K. Yamashiro
Mayor



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 188 435 163

June 14, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-031)
Variance No. 1021
Applicant: KLAUS D. CONVENTZ
Owners: RICHARD L. AND SANDRA M. WARDEN
Request: Variance From Minimum Front Yard and Side Yard Requirements
Tax Map Key: 7-8-021:108

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request with a 19.8 feet front yard in lieu of the minimum 20 feet front yard and a 8.5 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)(A)(B), Ordinance 97-88.

The subject property is located at Keauhou Estates, Lot 20, 2nd Increment, File Plan 1909, at Kahaluu and Keauhou 1, North Kona, Hawaii, Tax Map Key: 7-8-021: 108.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 15,291 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 895556 opened on May 4, 1989 and closed on March 8, 1991 for the construction of a single family dwelling.

JUN 16 1999

005135

Mr. Klaus D. Conventz

Page 2

June 14, 1999

- b. Building Permit No. 896830 opened on December 11, 1989 and closed on March 8, 1991 for the construction of a swimming pool.
3. A survey map prepared by KKM Surveys on April 17, 1999, shows the existing one story single family dwelling, attached garage and equipment room with a 19.8 feet front yard in lieu of the minimum 20 feet front yard. As such, the dwelling encroaches 2-3/8 inches into the required 20 feet front yard.
4. The survey also shows the existing one story single family dwelling, attached garage and equipment room with a 8.5 feet side yard in lieu of the minimum 10 feet side yard. As such, the dwelling encroaches 1 foot 6 inches into the required 10 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 and improvements.
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 and improvements in 1991.
7. There appears to have been a construction staking error in the siting of the structures 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 control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.
9. The variance application was filed with the Planning Department on April 26, 1999.

There was one objection from an adjacent property owner who stated in a letter dated May 26, 1999: "My husband and I are opposed to allowing variance on Lot 20 Keauhou Estates (File Plan 1909) on the side yards."

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

Mr. Klaus D. Conventz
Page 3
June 14, 1999

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.

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 2-3/8 inches into the required 20 feet front yard and 1 foot 6 inches into the required 10 feet side yard. These encroachments into the front yard and 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 front yard and 10 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.

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.

Mr. Klaus D. Conventz
Page 4
June 14, 1999

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 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.

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
a:\78021108\vwwarden.app

xc: West Hawaii Office