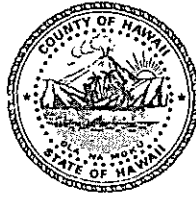


Stephen K. Yamashiro
Mayor



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 472 692 328

July 16, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-042)
Variance No. 1036
Applicant: KLAUS D. CONVENTZ
Owners: ROBERT AND LANI LOVIN
Request: Variance From Minimum Rear Yard, Side Yard and Open Space
Requirements
Tax Map Key: 8-1-015: 036

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, carport and shed with a 5.0 to 5.3 feet rear yard in lieu of the minimum 15 feet rear yard, 3.1 to 3.4 feet rear yard open space in lieu of the minimum 10 feet open space, 4.8 to 4.9 feet side yard in lieu of the minimum 8 feet side yard and a 3.0 to 3.4 feet side yard open space in lieu of the minimum 4 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(A)(B) and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

The subject property is located at Keopuka Kai Subdivision, Lot 3-1, Being a Portion of Grant 1584 to Daniel Barrett, at Keopuka, South Kona, Hawaii, Tax Map Key: 8-1-015: 036

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,430 square feet of land area.
2. The subject single family dwelling was issued the following building permits:

006165

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Pln by Klaus Conventz

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- a. Building Permit No. 32055 opened on October 15, 1965 and closed on December 28, 1965 for the construction of a single family dwelling.
 - b. Building Permit No. 995150 opened on February 17, 1999 and closed on March 4, 1999 for the addition of a carport.
3. A survey map prepared by the Wes Thomas Associates on April 28, 1999 shows the existing one story single family dwelling, carport and shed with a 5.0 to 5.3 feet rear yard in lieu of the minimum 15 feet rear yard. As such, the dwelling encroaches 9 feet 8-3/8 inches to 10 feet into the required 15 feet rear yard.
 4. The survey map shows the existing one story single family dwelling, carport and shed with 3.1 to 3.4 feet rear yard open space in lieu of the minimum 10 feet open space. The dwelling encroaches 6 feet 7-1/4 inches to 6 feet 10-7/8 inches into the required 10 feet rear yard open space.
 5. The survey map shows the existing one story single family dwelling, carport and shed with a 4.8 to 4.9 feet side yard in lieu of the minimum 8 feet side yard. As such, the dwelling encroaches 3 feet 1-1/4 inches to 3 feet 2--3/8 inches into the required 8 feet side yard.
 6. The survey map shows the existing one story single family dwelling, carport and shed with a 3.0 to 3.4 feet side yard open space in lieu of the minimum 4 feet open space. As such the dwelling encroaches 7-1/4 inches to 1 foot into the required 4 feet open space.
 7. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
 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 1965.
 9. There appears to have been a construction staking error in the siting of the structures on the property. This occurred in 1965 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 34 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 and improvements.

11. The variance application was filed with the Planning Department on May 17, 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.

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 9 feet 8-3/8 inches to 10 feet into the required 15 feet rear yard, 6 feet 7-1/4 inches to 6 feet 10-7/8 inches into the required 10 feet rear yard open space, 3 feet 1-1/4 inches to 3 feet 2--3/8 inches into the required 8 feet side yard and 7-1/4 inches to 1 foot into the required 4 feet open space. These encroachments into the rear yard, side 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 15 feet rear yard, 8 feet side yard and 4 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

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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.

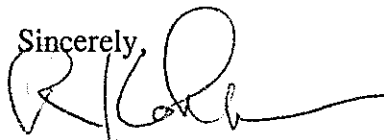
This variance request is approved, subject to the following conditions:

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 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 encroachments within the County right-of-way shall be removed.
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.

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