



Virginia Goldstein  
Director

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## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

**CERTIFIED MAIL**  
Z 472 692 349

August 27, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-052)  
Variance No. 1045  
Applicant: KLAUS D. CONVENTZ  
Owner: TODD HART  
Request: Variance From Minimum Side Yard, Rear Yard and Open Space  
Requirements  
Tax Map Key: 7-8-020: 019

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 and detached garage with a 15.5 feet rear yard in lieu of the minimum 20 feet rear yard; a 5.5 to 11.7 feet rear yard open space in lieu of the minimum 14 feet open space; a 6.9 feet side yard in lieu of the minimum 10 feet side yard; and a 4.3 feet side yard open space in lieu of the minimum 5 feet open space as required by Chapter 25, Ordinance 96-160, 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

The subject property is located at Keauhou Subdivision - Area 5, Lot 8, at Keauhou 1st, North Kona, Hawaii, Tax Map Key: 7-8-020: 019.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 14,845 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 2548 opened on August 22, 1977 and closed on September 29, 1978 for the construction of a single family dwelling and carport under dwelling.
  - b. Building Permit No. 841791 opened on October 4, 1984 and closed on August 26, 1985 for a swimming pool.
  - c. Building Permit No. 895088 opened on January 24, 1989 for the construction of a detached open carport. The permit remains open.
3. A survey map prepared by the KKM Surveys on April 11, 1999 shows the existing two story single family dwelling with a 15.5 feet rear yard in lieu of the minimum 20 feet rear yard. As such, the dwelling encroaches 4 feet 6 inches into the required 20 feet rear yard.
4. The survey map shows the existing two story single family dwelling, eaves and open deck with a 5.5 to 11.7 feet rear yard open space in lieu of the minimum 14 feet open space. As such the dwelling, eaves and open deck encroach 2 feet 3-5/8 inches to 8 feet 5 inches in the required 14 feet open space.
5. The survey map shows the existing detached garage with a 6.9 feet side yard in lieu of the minimum 10 feet side yard. As such the garage encroaches 3 feet 1-1/4 inches into the required 10 feet side yard.
6. The survey map shows the existing detached garage eave with a 4.3 feet side yard open space in lieu of the minimum 5 feet open space. As such the garage encroaches 8-3/8 inches into the required 5 feet open space.
7. When building permit for the single family dwelling and open carport was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and open carport.

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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 and open carport in 1977 and 1990 respectively.
9. There appears to have been a construction staking error in the siting of the structures on the property. This occurred in 1977 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 22 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which he had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.
11. The Department of Public Works, Building Division records do not contain any reference to construction of the open deck or garage.
12. The Real Property Tax Office records indicate a deck enclosure and open deck assessed for 1990.
13. The variance application was filed with the Planning Department on June 14, 1999.
14. There were two objections from the adjacent property owners:

Lucy Corrigan - Letter dated July 18, 1999 states: "I am part owner of the house next to the above referenced lot and I would like to express my objection to allowing the variance. We recently did an extensive renovation on our house, and we made every effort to comply with all building ordinances. Our feeling is that the ordinances are there for a reason. Any homeowner who, without good reason, does not comply is threatening the property values of his neighbors and is setting a dangerous precedence. In this case, the lot is relatively large; there is space enough to develop it properly. Since there are no compelling reasons, in this situation, to circumvent the law, why should the variance be allowed? My opinion is that, no, the variance should not be allowed.

"I trust that you will take my comments into serious consideration before making any decision on this application. Thank you very much."

David E. Orlans - Letter dated July 20, 1999 states: "As the owner of the house next to the above applicant, I ask that you NOT APPROVE the referenced variance.

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"The setback variances are designed to allow all homeowners the right to their privacy and personal space. All the other houses in the community complied with the variances. I do not understand why one individual should be allowed to violate a simple and obvious rule that affects the lives of others. If you approve this gross disregard for the law you would be violating my rights as clearly protected by the building codes.

"That you would be approving the violation retroactively makes no difference. You would be telling all homeowners that the building codes may be violated at the expense of others.

"We recently completed an extensive renovation of our house. We designed in accordance with all existing codes, even at increased costs. We updated the electrical and plumbing at increased costs. We obtained building permits and building inspectors insured that we complied with the codes. Should we not have bothered?"

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 owner on his own volition is honestly trying to resolve this long standing problem which was not created by him. 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 and garage to conform with the minimum setbacks would create undue and excessive hardships for the applicant when other more reasonable options are available.
3. Architectural alterations to the open deck to conform to the minimum setback would not create undue and excessive hardship. The applicant has agreed to remove the open deck to conform to the minimum setback requirements.

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

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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 dwelling encroaches 4 feet 6 inches into the required 20 foot rear yard. The dwelling, eaves and open deck encroach 2 feet 3-5/8 inches to 8 feet 5 inches in the required 14 foot open space. The corner of the garage encroaches 3 feet 1-1/4 inches into the required 10 foot side yard. 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 foot rear yard, 10 foot side yard, 14 foot rear yard open space and 5 foot side yard 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 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. The open deck shall be removed.
4. A building permit shall be secured from the Department of Public Works, Building Division for the garage and other unpermitted additions.
5. 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,

A handwritten signature in black ink, appearing to read "V. Goldstein", with a long horizontal line extending to the right.

VIRGINIA GOLDSTEIN

Planning Director

EMM: rld

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xc: West Hawaii Office