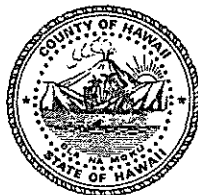


Stephen K. Yamashiro  
Mayor



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 472 692 382

October 20, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-068)  
Variance No. 1058  
Applicant: KLAUS D. CONVENTZ  
Owners: MICHAEL AND NICOLE LINGENFELDER  
Request: Variance From Minimum Side Yard and Open Space Requirements  
Tax Map Key: 7-6-020: 022

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow a two story single family dwelling and attached garage with a 4.16 to 4.34 feet side yard in lieu of the minimum 8 feet side yard and a 3.66 to 3.84 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)(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 Kilohana Subdivision, Lot 22, Unit 1-A, File Plan 1304, at Holualoa 1 & 2, North Kona, Hawaii, Tax Map Key: 7-6-020: 022.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,280 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 3337 opened on May 1, 1978 and closed on December 29, 1978 for the construction of a single family dwelling.
  - b. Building Permit No. 985162 opened on February 20, 1998 and closed on April 12, 1999 for an addition to the lower level.
3. A survey map prepared by Don McIntosh on July 28, 1999 shows the two story single family dwelling and attached garage with a 4.16 to 4.34 feet side yard in lieu of the minimum 8 feet side yard. As such, the dwelling and attached garage encroach 3 feet 7-7/8 inches to 3 feet 10-1/8 inches into the required 8 feet side yard.
4. The survey shows the two story single family dwelling and attached garage with a 3.66 to 3.84 feet side yard open space in lieu of the minimum 4 feet open space. As such the detached garage encroaches 1-7/8 to 4-1/8 inches in the required 4 feet open space.
5. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and attached garage.
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 attached garage in 1978.
7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1978 when the dwelling and attached garage were 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 21 years since the construction of the existing dwelling and attached garage 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.

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9. The variance application was filed with the Planning Department on August 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.
2. Any architectural alterations or design changes to the dwelling and attached garage 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. As such, the dwelling and attached garage encroach 3 feet 7-7/8 inches to 3 feet 10-1/8 inches into the required 8 feet side yard and 1-7/8 to 4-1/8 inches in the required 4 feet open space. These encroachments into the 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 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 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

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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. Obtain a building permit for the previous conversion of the carport.
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,

  
for VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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xc: West Hawaii Office