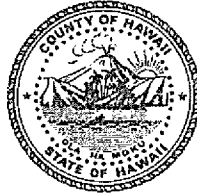


Stephen K. Yamashiro  
Mayor



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 328 993 037

December 28, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-092)  
Variance No. 1078  
Applicant: KLAUS D. CONVENTZ  
Owner: JERRY SOVAK TRUST  
Request: Variance From Minimum Side Yard, Rear Yard and Open Space  
Requirements  
Tax Map Key: 6-5-010: 010

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow a proposed one story detached garage with a 15 feet side yard in lieu of the minimum 20 feet side yard, a 10 feet rear yard in lieu of the minimum 30 feet rear yard, and a 7 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 7, Section 25-5-76(a)(1) 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. At the present time there is a shortage of staff. This personnel shortage will be resolved and result in more timely responses to future applications. Your patience is appreciated.

The subject property is located at Penhallow Subdivision, Lot 2-B,, at Waimea Homesteads, South Kohala, Hawaii, Tax Map Key: 6-5-010: 010.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 44,861 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. 7302 opened on September 7, 1949 and closed February 16, 1950 for the construction of a single family dwelling.
3. The original application contained a public notice that was mailed to the surrounding property owners. This public notice referred to minimum 15 feet side yard and a 10 feet side yard open space requirements.
4. In a letter dated December 17, 1999 the applicant stated that the public notice was mailed out to the surrounding property owners on November 1, 1999 with the corrected side yard and open space requirements.
5. A survey map prepared by Don McIntosh Consulting on August 31, 1999 shows the one story single family dwelling complies with all the minimum required setbacks.
6. The site plan shows the proposed one story detached garage with a 15 feet side yard in lieu of the minimum 20 feet side yard. As such, the proposed detached garage would encroach 5 feet into the minimum 20 feet side yard.
7. The site plan shows the proposed one story detached garage with a 10 feet rear yard in lieu of the minimum 30 feet rear yard. As such, the proposed detached garage would encroach 20 feet into the minimum 30 feet rear yard.
8. The site plan shows the proposed one story detached garage with a 7 feet rear yard open space in lieu of the minimum 14 feet open space. As such, the proposed detached garage would encroach 7 feet into the minimum 14 feet open space.
9. The variance application was filed with the Planning Department on October 15, 1999

The property is zoned Agricultural-1a and is irregular in shape. The topography of the land drops off sharply from north to southeast. The parcel is landscaped with large koa and magnolia trees. The applicant states that the adjacent landowners of lot 2-C and 2-F are over 15 feet above the elevation of the residence. The roof of the proposed one story detached garage would be barely visible from the neighbor's lots.

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There were two objections from the adjacent property owners stating their objections to the variance. Dr. William Bolman and Victoria Asayama in a letter dated October 18, 1999 state: "1) We believe this may violate the covenants of the Penhallow subdivision. 2) Specifically, the 2 properties are already so close together in an area which spaciousness is one of the keys to property use and value, that granting the variance will promote crowding, raise the potential for neighbor problems (noise, etc), and perhaps even negatively impact property values. We say this on the basis of our experience with the Sovaks. Even with the properties as separate as they are now, the Sovaks bitterly opposed our use of a common driveway (for which there was an easement) to the property, causing a lawsuit and requiring us to put in a driveway from above. We are uncertain how this current variance may cause a recurrence of previous problems, which have been resolved by the separation of the two properties.

In a letter dated November 30, 1999 from Mr. Tim E. Desilva, Attorney for Cecily Johnston he states: "One of the reasons for her opposition to the variance application is that neither Mr. and Mrs. Sovak, the prior owners, nor Mr. and Mrs. Svetich, the current owners have been willing to indemnify my client for any damage or loss which may arise if they are allowed to build further into the setback area. My client is concerned that foliage, trees, branches, etc. which would pose little or no danger to buildings under the existing setback requirements, may create a potential problem if the applicants are allowed to build closer to the common boundary.

"My client is also concerned that there may be no restriction on how high or how many stories the applicant may build in the revised setback area. Although it is our understanding that the application is for a single story structure, my client wants to make sure that it not only starts out as a single story structure, but forever remains a single story structure. Anything more than a single story may block my client's view plane.

"Ms. Johnston also has a concern regarding a stone wall which is near the proposed new structure. The stone wall is a loose stone wall that does not appear to have rebar and concrete incorporated into it. Further, the applicants stone wall encroaches onto my client's property. If there is flooding or heavy rains, the stone wall may not be able to retain the earth behind it and there is an increased risk of damage to a structure if it is built closer to the common boundary.

"If the applicant agrees to indemnify and hold my client harmless from the potential liability described above, and warrants that the structure will be a single story structure, my client would withdraw her opposition to this variance application. However, we have sent a written proposal to the applicant through their real estate agent, and have not had any response to our proposal. Under the present circumstances, my client has no choice but to oppose the variance application."

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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 investigation of this particular matter reveals that construction of the proposed one story detached garage with a 20 feet side yard and 30 feet rear yard would place the garage 10 feet below the single family residence.
2. Any other location for the proposed detached garage to conform with the minimum setbacks would create undue and excessive hardship 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 proposed one story detached garage would encroach 5 feet into the minimum 20 feet side yard, 20 feet into the minimum 30 feet rear yard and 7 feet into the minimum 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 20 feet side yard, 30 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 rest of the existing dwelling comply 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.

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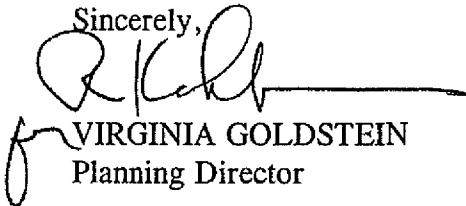
This variance request is approved, subject to the following conditions:

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 stonewall along Laelae Road which encroaches into the County right-of-way by .45 feet 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

EMM: rld

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xc: West Hawaii Office