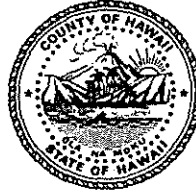


Stephen K. Yamashiro  
Mayor



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**  
P 417 370 213

February 19, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 98-083)  
Variance No. 988  
Applicant: KLAUS D. CONVENTZ  
Owners: THOMAS L. AND NORMA STEPHENSON  
Request: Variance From Minimum Side Yard Requirements  
Tax Map Key: 7-5-012: 049

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 with an attached one story ohana dwelling with a 16.8 feet side yard in lieu of the minimum 20 feet side yard and 7.9 to 13.0 feet 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) and Article 4, Division 4, Section 25-4-44(a) and Ordinance No. 97-88.

The subject property is located at Lot 1, in the Kula Kai Estates subdivision, being a portion of Grant 1744 to Kahaunaele at Puaa 2nd, North Kona, Hawaii, Tax Map Key: 7-5-012: 049.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.754 acres of land area.
2. The subject property is part of the Kula Kai Estates Subdivision.
3. The subject single family dwelling and attached ohana dwelling were issued the following building permits:

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- a. Building Permit No. 895029 opened on January 10, 1989 and closed on December 21, 1989 for the construction of a swimming pool.
  - b. Building Permit No. 895315 opened on March 13, 1989 for the construction of a swimming pool and retaining wall.
  - c. Building Permit No. 895401 opened on April 4, 1989 and closed on January 9, 1990 for the construction of a new one story single family dwelling.
  - d. Building Permit No. 895513 opened on April 25, 1989 and closed on October 5, 1989 for the construction of an attached ohana dwelling.
4. A survey map prepared by KKM Surveys on December 15, 1998, shows the existing one story single family dwelling with an attached one story ohana dwelling with a 16.8 foot side yard in lieu of the minimum 20 feet side yard. As such, the attached dwelling encroaches 3 feet 2-3/8 inches into the required 20 feet side yard.
  5. The survey shows the existing one story single family dwelling with attached one story ohana dwelling with a 7.9 to 13.0 feet open space in lieu of the minimum 14 feet open space. The roof overhang encroaches 1 foot to 6 feet 1-1/4 inches into the required 14 feet open space yard.
  6. When the building permits were approved, the owners received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
  7. 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 1989.
  8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1989 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.
  9. It has been over 10 years since the construction of the existing dwelling and the attached ohana dwelling were 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.
  10. The variance application was filed with the Planning Department on December 21, 1998.

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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 buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling encroaches 3 feet 2-3/8 inches into the required 20 feet side yard. The roof overhang encroaches 1 foot to 6 feet 1-1/4 inches into the required 14 feet open space yard. 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 20 feet side 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 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

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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. If the curbing and landscaping extend into the County right of way; any encroachments within the County right-of-way should be removed in accordance with the requirements of the Department of Public Works.
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 Royden Yamasato of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
a:\75012049\stephenson.app

xc: West Hawaii Office