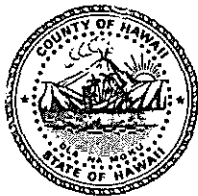


Stephen K. Yamashiro
Mayor



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 417 370 214

February 22, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-001)
Variance No. 989
Applicant: KLAUS D. CONVENTZ
Owner: BARBARA A. RUTTER
Request: Variance From Minimum Front Yard, Side Yard and Open Space
Requirements
Tax Map Key: 6-4-001: 114

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 one story ohana dwelling with a 15.1 feet to 9.7 feet front yard in lieu of the minimum 20 feet front yard, a 6.7 to 8.0 feet side yard in lieu of the minimum 10 feet side yard, a 12.6 feet front yard open space in lieu of the minimum 14 feet open space and a 3.0 to 4.2 feet side yard open space in lieu of the minimum 5 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(B) and Article 4, Division 4, Section 25-4-44(a)(2), Ordinance 97-88.

The subject property is located at Lot K-2-B, Being the Whole Grant 13567 to Lydia Maertens and being Portions of Lot 52 of the Puukapu Homesteads, First Series and Grant 4210 to Elizabeth W. Lyons, at Puukapu, South Kohala, Hawaii, Tax Map Key: 6-4-001: 114.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 15,188 square feet of land area.

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2. Ohana Dwelling Permit No. 93 was approved by the Planning Department on September 21, 1983.
3. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 810395 opened on February 11, 1981 for the construction of a dwelling. The permit remains open.
 - b. Building Permit No. 821255 opened on July 13, 1982 for an addition to the dwelling. The permit remains open.
 - c. Building Permit No. 831983 opened on November 28, 1983 and closed on February 14, 1986 for the construction of dining room, bedroom, fireplace and second story art studio.
 - d. Building Permit No. 831984 opened on November 28, 1983 and closed on February 14, 1986 for the construction of the ohana dwelling.
 - e. Building Permit No. 841447 opened on August 14, 1984 and closed on February 14, 1986 for the construction of a laundry room, loft, master shower and windows in the living room.
 - f. Building Permit No. 851422 opened on August 5, 1985 and closed on February 14, 1986 to convert the existing studio into a bathroom.
 - g. Building Permit No. 851423 opened on August 5, 1985 and closed on February 14, 1986 for the construction of a laundry room and storage.
4. A survey map prepared by Wes Thomas Associates on December 15, 1998, shows the existing two story single family dwelling and one story ohana dwelling with a 15.1 to 19.7 feet front yard in lieu of the minimum 20 feet front yard. As such the dwellings encroach 3-5/8 inches to 4 feet 10-7/8 inches in the required 20 feet front yard.
5. The survey map shows the existing single family dwelling and one story ohana dwelling with a 6.7 to 8.0 feet side yard in lieu of the minimum 10 feet side yard. As such the dwellings encroach 2 feet to 3 feet 3-5/8 inches into the required 10 feet side yard.
6. The survey map shows the existing single family dwelling and one story ohana dwelling with a 12.6 feet front yard open space in lieu of the minimum 14 feet open

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space. As such the dwellings encroach 1 foot 4-7/8 inches into the required 14 foot open space.

7. The survey map shows the existing single family dwelling and one story ohana dwelling with a 3.0 to 4.2 feet side yard open space in lieu of the minimum 5 feet open space. As such the dwellings encroach 9-5/8 inches to 2 feet into the required 5 foot open space.
8. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwellings.
9. 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 dwellings in 1981.
10. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1981 when the dwellings were constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachments. No other evidence has been found to show otherwise.
11. It has been over 18 years since the construction of the existing dwellings were approved by the County, and the applicant is trying to resolve a situation she had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwellings.
12. The variance application was filed with the Planning Department on January 4, 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 owner on her own volition is honestly trying to resolve this long standing problem which was not created by her. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.

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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 dwellings encroach 3-5/8 inches to 4 feet 10-7/8 inches in the required 20 feet front yard, 2 feet to 3 feet 3-5/8 inches into the required 10 feet side yard, 1 foot 4-7/8 inches into the required 14 feet front yard open space and 9-5/8 inches to 2 feet into the required 5 feet side yard open space. These encroachments into the front 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 20 feet front yard, 10 feet side yard, 14 feet front yard open space and 5 feet 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 dwellings 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. If applicable, approval from the Board of Appeals for all Building Code Violations will be obtained.

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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,



for VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office