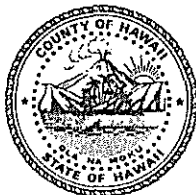


Stephen K. Yamashiro  
Mayor



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 188 432 598

May 5, 1999

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-004)

Variance No. 999

Applicant: KLAUS D. CONVENTZ

Owner: SHERL L. BAKER

Request: Variance From Minimum Front Yard and Open Space Requirements

Tax Map Key: 7-5-024: 038

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 27.11 to 29.01 feet front yard in lieu of the minimum 30 feet front yard and 21.47 feet front yard open space in lieu of the minimum 24 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 7, Section 25-5-76(a) and Article 5, Division 1, 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 Keopu Subdivision, Lot 3, Keopu 3rd, North Kona, Hawaii, Tax Map Key: 7-5-024: 038.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 1.028 acres of land area.

003900

MAY 10 1999

Klaus Conventz picked up @ Kona PD

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2. The subject property is part of the Keopu Subdivision.
3. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. 885968 opened on October 14, 1988 and closed on April 18, 1989 for the construction of a single family dwelling and garage.
4. A survey map prepared by Don McIntosh Consulting on February 12, 1999, shows the existing two story single family dwelling and detached garage with a 27.11 to 29.01 feet front yard in lieu of the minimum 30 feet front yard. As such, the attached dwelling and detached garage encroach 11-7/8 inches to 2 feet 10-3/4 inches into the required 30 feet front yard.
5. The survey shows the existing two story single family dwelling and detached garage with a 21.47 feet front yard open space in lieu of the minimum 24 feet open space. The roof overhang encroaches 2 feet 6-3/8 inches into the required 24 feet open space.
6. When the building permit was approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling and detached garage.
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 1988.
8. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1988 when the dwelling and detached 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.
9. It has been over 11 years since the construction of the existing dwelling and the detached garage were approved by the County, and the applicant is trying to resolve a situation which she had no control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and detached garage.
10. The variance application was filed with the Planning Department on February 18, 1999.

There were objections from the following adjacent and surrounding property owners.

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- a. Mr. Erne M. Levins - (March 8, 1999 Letter):

"Thank you for having me be informed of the requested variance on the above listed lot.

"I respectfully request that you not grant this waiver. For the size of the lot mentioned, 24.0' (feet) is a small amount of open space as a minimum. Also, I also hope you do not change the road setback of just 30.0' (feet) minimum. I believe these minimums are generous as they exist.

"I serve, on a volunteer basis, as the Chair of the Planning Road for the Town of Olive, New York."

- b. Mr. Herman Harvey - (March 22, 1999 Letter):

"I received two notices dated February 10, 1999 and March 10, 1999 respectively regarding a request for variance on Sherl L. Baker's property (Tax Map Key: 3/7-5-024-038). However, both descriptions were lacking clarity and moreover confusing.

"I sense that the requested variance involves: (1) some sort of encroachment on the existing roadway, or (2) the relocation of existing structures as cited in the original building drawing and permit. If either of the two above is a correct assessment of the request for variance, I am totally opposed to the granting of such a variance.

"If the description of the objectives of the variance request were clearer than what I presently envision, my objection to granting the request would be more palatable. Furthermore, I am particularly interested in the impact it would have on the Keopu Subdivision. If you can provide a better description on the variance request I might change my mind, but otherwise I oppose the request for variance."

- c. Mr. Leslie Thuet - (April 15, 1999 Letter):

"I will have my presentation ready Sat. Will fax it to you over the weekend. Photos ready Sat. Will deliver them early Mon. a.m."

Mr. Leslie Thuet - (April 19, 1999 Letter):

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"I am unable to provide my complete statement Re: Sherl L. Baker variance. As I said, some facts need to be verified, which will require Monday & part of Tuesday.

"I respectfully request that extension."

Mr. Leslie Thuet - (April 19, 1999 Letter):

"The following information and request pertains to an application for variance of Lot 3, Keopu Heights, facing Hiona street and bounded on the n/e side by a private road, Kineti St.

"While I am outside of the required bounds to be notified, it is only a short distance more and my long term residence causes me to present information included and a request the variance be denied, for the following reasons.

"Nothing can be more important before construction of a building that its correct placement and the right to build. Neither the County of Hawai'i or the adjacent property owners should bear any responsibility or obligations to rectify a mistake that could easily be prevented by a minimal expenditure of dollars or other cautious means. I would agree a first infraction innocently done deserves consideration. However both the builder and the subsequent owner have committed other transgressions, known about them and done nothing. Indicating disregard for rules and subdivisions future values and appearance. Here are the examples:

"At least two walls erected on other than applicants property, and formal knowledge of the fact since Feb. 12, 1999 and no effort to remove said walls. Permanent dog Kennels placed other than applicants property and no effort to remove same, that fact also known since Feb. 12, 1999.

"I am enclosing photos which will demonstrate total disregard for the adjoining property owners. The photo (#1) show Kineti Road owned by the Keopu Neighborhood Association plated heavily to shield lot #3 from view and provide privacy by either the seller or builder, that is a serious violation of the subdivisions covenants and as a former member of the Associations governing body the seller would have had to know that. Investigation by this writer indicates no permission was ever granted to even plant on the property owned by the Keopu Heights Neighborhood Association. The expense of clearing this

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area, were it only to satisfy the up slope neighbor will be expensive, were that the only consideration.

“However at the present time the area north of the bridge shown on (photo #2) is being cleared for one or more homes. Logic now saying, adequate access by both fire and emergency equipment such as ambulances will be a necessity. Kineti Street being 40ft. wide with only eighteen feet paved will make it imperative Kineti be widened and passable to accommodate at least emergency equipment. It then must be taken into consideration, that although the infraction does not include the eaves of the two structures which adds approximately three feet nearer the Kineti road, also when the road is widened to forty feet total, the edge of the useable road nearest the applicant's home will be eleven feet plus the three foot eaves closer than what now exist.

“What I have endeavored to demonstrate so far in this communication is the lack of consideration for the other person. As all I have defined could have been prevented had either the builder/developer or the current seller taken into consideration the community. After the builders completed this property to which we are now concerned. A new project was commenced on a private street in Keopu, Alila-Au/Lulu-Au. During that period while hauling small trailer loads of concrete, the concrete was spilled along Mamalahoa Hwy. Down Hiona and to his job on the private road. No effort to clean up. By request it was removed. Before and since our roads have been spotless by relentless vigilance.

“Subsequently when the job was completed and prepared for sale, it became necessary for me to tell the selling agent although there were only four lots facing the private road, a fifth quarter interest had been granted the lot cornering on Hiona and the private road, a fact which I had told the builder when he commenced the job. Not too much later, I was advised by letter from an attorney that 3-1/4 interest had been divided into 24/32's and then divided by four thereby allowing five owners instead of the intended four, and permitting sale of the builders house on the private road. No contact, no effort to resolve the error. I later talked with the gentlemen who purchased the house, and was told he did not know that situation existed. The importance of this maneuver was not only a quick side step to sell a house, the original owners purchased thinking there would only be four owners to the private road myself being one of those first owners.

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"There is a good deal more could be added, my purpose is to point out to the planning commission that there exist an attitude here in Keopu, 'oh well they won't spend any money to enforce the covenants, so do as you please' then when a situation like we are addressing comes along and an exemption is granted it validates that thinking. There is a current case pending. Finally it can be assumed neither the builder/developer or current seller are losing money and should bear their own responsibility and not risking the adjoining property owners values long after petitioners are gone. I close by reminding anyone who reads this piece. We who have live here since the beginning are very proud of this area and are willing to do whatever is possible to care for the subdivision and it's future."

- d. Mr. Bob Platt, representing the Keopu Heights Neighborhood Association - (April 15, 1999 Letter):

"Our first choice in this matter would be to grant no variance or to make the penalty fee expensive enough to discourage 'deliberate accidents of measurement.'

"However, we understand that this variance will go through. With that in mind, we hope you will consider the following.

"According to the letter of March 12, 1999 from Thomas Pack, DPW Engineering Division:

1. 'Any encroachments within the County right of way must be removed.

There is a rock wall and a dog kennel within the road right of way, neither of which has been removed.

2. "The movable shed (storage) is located within the FEMA 'AE' flood zone; this is a violation of HCL Chapter 27 and must be addressed.

"This shed has not been removed.

"We respectfully request that you make the removal of the encroachments a condition of approval."

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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 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.
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 and detached garage encroach 11-7/8 inches to 2 feet 10-3/4 inches into the required 30 feet front yard and 2 feet 6-3/8 inches into the required 24 feet open space. These encroachments into the front 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 30 feet front yard and 24 foot 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 and detached garage complies with the minimum yard requirements of the Zoning Code.

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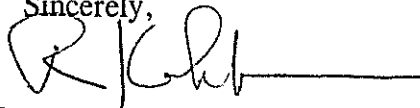
This variance request is approved, subject to the following conditions:

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 moveable storage shed shall 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 Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
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xc: West Hawaii Office