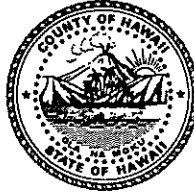


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

**CERTIFIED MAIL**

7099 3220 0000 4868 8242

**County of Hawaii**

**PLANNING DEPARTMENT**

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

August 22, 2000

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

Dear Mr. Conventz:

Variance Application WH(VAR 00-043)

Variance No. 1144

Applicant: KLAUS D. CONVENTZ

Owner: LEILANI LEWIS

Request: Variance From Minimum Front Yard and Side Yard Requirements

Tax Map Key: 6-5-010:029

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 with a 19.76 feet front yard in lieu of the minimum 20 feet front yard and a 8.53 to 9.7 feet side yard in lieu of the minimum 10 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A)(B), Ordinance 97-88.

The subject property is located at Kamuela Heights Subdivision, Lot 26, File Plan 977 at Waimea, South Kohala, Hawaii, Tax Map Key: 6-5-010:029.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property consists of 10,000 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 896074 opened on August 22, 1989 and closed on May 9, 1990 for a single family dwelling.
  - b. Building Permit No. 995433 opened on April 21, 1999 and closed on July 27, 1999 for the installation of a solar water heater.

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3. A survey map prepared by Richard H. Cassera on May 29, 2000 shows the two story single family dwelling with a 19.76 feet front yard in lieu of the minimum 20 feet front yard. As such, the dwelling encroaches 2-7/8 inches into the required 20 feet front yard.
4. The survey map shows the existing two story single family dwelling with a 8.53 to 9.7 feet side yard in lieu of the minimum 10 feet side yard. As such the dwelling encroaches 3-5/8 inches to 2 feet 3-5/8 inches in the required 10 feet side yard.
5. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
6. 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.
7. It has been over 11 years since the construction of the existing dwelling was 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 improvements.
8. The variance application was filed with the Planning Department on June 7, 2000.

There were no letters of objection 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. As such, the dwelling encroaches 2-7/8 inches into the required 20 feet front yard and 3-5/8 inches to 2 feet 3-5/8 inches in the required 10 feet side yard. These encroachments will not diminish the ability for adequate light and air to circulate and will still provide adequate open space.

Therefore, while Zoning Code requires a minimum 20 feet front yard and 10 feet side yard 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 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. Electrical Permit No. E995443 shall be finalized by the Department of Public Works Building Division.

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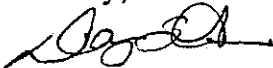
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4. All other applicable State and County rules and regulations shall be complied with.

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 Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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xc: West Hawaii Office