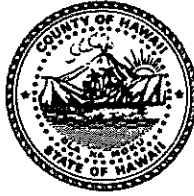


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**

7000 0600 0024 2904 6952

**PLANNING DEPARTMENT**

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

November 1, 2000

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

Dear Mr. Conventz:

Variance Application WH(VAR 00-057)  
Variance No. 1154  
Applicant: KLAUS D. CONVENTZ  
Owners: ANTHONY & AMY ERDMAN  
Request: Variance From Minimum Side Yard Requirements  
Tax Map Key: 7-4-018: 101

After reviewing your application and the additional information submitted, the Planning Director certifies the approval to allow the existing two story single family dwelling with lanai, carport and shed with a side yard of 5.9 to 7.9 feet in lieu of the minimum 8 feet side yard as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B), Ordinance 97-88.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. Your patience is appreciated.

The subject property is located at Lot 172, Kona Chocho Estates-Unit 2, File Plan 1581 at Kealakehe, North Kona, Hawaii, Tax Map Key: 7-4-018: 101.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property consists of 7,537 square feet of land area.
2. The subject single family dwelling was issued the following building permit:
  - a. Building Permit No. K06025 opened on September 20, 1983 and closed on April 10, 1984 for the construction of a two story single family dwelling.

011948

NOV 10 2000

Mr. Klaus D. Conventz

Page 2

November 1, 2000

3. A survey map prepared by KKM Surverys on July 17, 2000 shows the two story single family dwelling with lanai, carport and shed with 5.9 to 7.9 feet side yard in lieu of the minimum 8 feet side yard. As such, the dwelling and improvements encroach 1-1/4 inches to 2 feet 1-1/4 inches into the required 8 feet side yard.
4. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
5. 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 1983.
6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1983 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 17 years since the construction of the existing dwelling was approved by the County, and the applicant is trying to resolve a situation which he 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 July 19, 2000.

A letter of objection was received from Renato & Judith Bergonia dated August 25, 2000.  
(See exhibit A)

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 his own volition is honestly trying to resolve this long standing problem which was not created by him. 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 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 and improvements encroach 1-1/4 inches to 2 feet 1-1/4 inches into the required 8 feet side yard setback.

This encroachments into the side yard 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 8 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. All other applicable State and County rules and regulations shall be complied with.

Mr. Klaus D. Conventz

Page 4

November 1, 2000

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 Roxanne Delaries of this department at 327-3510.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

RLD:rid

a:\74018101\erdman.app

xc: West Hawaii Office

2000 AUG 28 PM 2 24

PLANNING DEPARTMENT  
COUNTY OF HAWAII

August 25, 2000

Virginia Goldstein  
Planning Director  
25 Aupuni Street, Room 109  
Hilo, Hawaii 96720

Dear Ms. Goldstein,

This is in response to a public notice of correspondence received re tax map key 7-4-018:101, lot 172 Kona Chocho Estates- Unit 2, file plan 1581 at Kealakaa Street North Kona, Island of Hawaii. Being the parties involved or the neighboring lot we absolutely denying their application for variance as requested.

The owner of said location violated the Ordinance of minimum requirements of set back. We want the set back of 8.0 (feet) south side yard would be corrected and must prevail.

Thank you for giving us the opportunity to provide comments and hoping that action will take place as soon as possible.

Sincerely,

*Renato Bergonia*  
*Judith Bergonia*

Renato & Judith Bergonia  
Tax Map Key 3-7-4-18-102  
74-5029 Kealakaa St.  
Kailua-Kona, HI 96740

008304

EXHIBIT

"A"