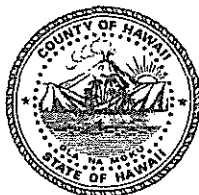


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL

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PLANNING DEPARTMENT

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

January 24, 2000

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-096)
Variance No. 1085
Applicant: KLAUS D. CONVENTZ
Owners: JERRY & JEANNE S. CUSTODE
Request: Variance From Minimum Front and Side Yard Requirements
Tax Map Key: 7-3-029: 008

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your request to allow an existing one story single family dwelling, attached garage and shed with a 19.2 to 19.4 feet front yard in lieu of the minimum 20 feet front yard, and a 5.3 to 9.8 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)(1)(A)(2)(B), Ordinance 97-88.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. At the present time there is a shortage of staff. This personnel shortage will be resolved and result in more timely responses to future applications. Your patience is appreciated.

The subject property is located at Kona Palisades, Unit I, Kalaoa 5th, North Kona, Hawaii, Tax Map Key: 7-3-029: 008.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,052 sq. ft. of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. 465801 opened on November 27, 1970 and closed on

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July 13, 1971 for the construction of a single family dwelling.

- b. Building Permit No. 995348 opened on April 1, 1999 and closed on May 10, 1999 for the construction of an open deck with portable spa.
3. A survey map prepared by Kevin McMillen on July 16, 1999 shows the dwelling, attached garage and shed with a 19.2 to 19.4 feet front yard in lieu of the minimum 20 feet front yard. As such, the dwelling, attached garage and shed encroaches 7-1/4 inches to 9-5/8 inches into the required 20 feet front yard.
4. The survey map also shows the dwelling, attached garage and shed with a 5.3 to 9.8 side yard in lieu of the minimum 10 feet side yard. As such, the single family dwelling, attached garage and shed encroaches 2-3/8 inches to 4 feet 8-3/8 inches into 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. 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, attached garage and shed in 1971.
7. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1971 when the dwelling, attached garage and shed 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.
8. It has been over 29 years since the construction of the existing dwelling, attached garage and shed 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 and improvements.
9. The variance application was filed with the Planning Department on November 15, 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

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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, attached garage and shed 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, attached garage and shed encroaches 7-1/4 inches to 9-5/8 inches into the required 20 feet front yard and 2-3/8 inches to 4 feet 8-3/8 inches into the required 10 feet side yard. This encroachment 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 and minimum 10 feet side yard in this particular case, the encroachment 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.

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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. 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 Roxanne Delaries of this department.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office