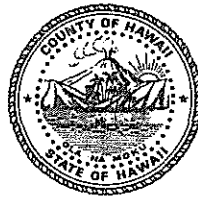


Stephen K. Yamashiro  
Mayor



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 99-099)  
Variance No. 1088  
Applicant: KLAUS D. CONVENTZ  
Owners: DALE K. AND KATHLEEN G. JOHNS  
Request: Variance From Minimum Front Yard, Rear Yard and Open Space  
Requirements  
Tax Map Key: 7-7-004:040

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing one story single family dwelling and deck with a 11.0 to 12.9 feet front yard in lieu of the minimum 15 feet front yard, a 2.6 to 4.4 feet front yard open space in lieu of the minimum 5 feet open space; a 11.0 feet rear yard in lieu of the minimum 15 feet rear yard, and a 2.2 feet rear yard open space in lieu of the required 5 feet rear yard open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 9, Section 25-5-96(1)(2)(A) and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

The subject property is located at C-42 (DROA Survey Map, Lot 1-B, Being a Portion of L.P. Grant 12054 to F.R. Greenwell and L.C. Aw. 9971, Apana 28 to Leleiohoku, at Kaumalumalu, North Kona, Hawaii, Tax Map Key: 7-7-004:040.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 7,500 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
  - a. Building Permit No. 11063 opened on July 5, 1951 and closed on

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November 9, 1951 for the construction of a single family dwelling.

- b. Building Permit No. 27347 opened on April 16, 1963 and closed on November 8, 1963 for a bedroom addition.
  - c. Building Permit No. 200 opened on January 16, 1973 and closed March 6, 1973 for a bedroom addition.
  - d. Building Permit No. 458 opened on July 6, 1973 and closed on November 2, 1973 for a carport and patio.
  - e. Building Permit No. 864 opened on May 22, 1974 and closed on May 31, 1974 for a lean-to type of carport.
  - f. Building Permit No. 2284 opened on February 15, 1977 and closed on August 12, 1980 to replace roof.
  - g. Building Permit No. K04102 opened on February 8, 1980 and closed on April 25, 1980 for repair to the dwelling.
  - h. Building Permit No. K06766 opened on March 25, 1985 and closed on June 18, 1985 for conversion of garage to office.
  - i. Building Permit No. K06905 opened on June 14, 1985 and closed on June 18, 1985 for a swimming pool.
3. A survey map prepared by Kevin McMillen on November 13, 1999 shows the one story single family dwelling and deck with a 11.0 to 12.9 feet front yard in lieu of the minimum 15 feet front yard. As such, the dwelling encroaches 2 feet 1-1/4 inches to 4 feet into the required 15 feet front yard.
  4. The survey map shows the one story single family dwelling with a 2.6 to 4.4 feet front yard open space in lieu of the minimum required 5 feet open space. As such, the dwelling encroaches 7-1/4 inches to 2 feet 7-1/4 inches into the required 5 feet open space.
  5. The survey map shows the one story single family dwelling with a 11.0 feet rear yard in lieu of the minimum 15 feet rear yard. As such, the dwelling encroaches 4 feet into the required 15 feet rear yard.

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6. The survey map shows the one story single family dwelling with a 2.2 feet rear yard open space in lieu of the minimum 5 feet open space. As such, the dwelling encroaches 2 feet 9-5/8 inches into the required 5 feet open space.
7. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
8. 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 1951.
9. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1951 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.
10. It has been over 49 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.
11. The variance application was filed with the Planning Department on November 29, 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 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 and storage shed to conform with the minimum setbacks would create undue and excessive hardships for the applicant when other more reasonable options are available.

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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 feet 1-1/4 inches to 4 feet into the required 15 feet front yard, 7-1/4 inches to 2 feet 7-1/4 inches into the required 5 feet open space, 4 feet into the required 15 feet rear yard and 2 feet 9-5/8 inches into the required 5 feet open space. These encroachments 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 15 feet front yard, 15 feet rear yard and 5 feet 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 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.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

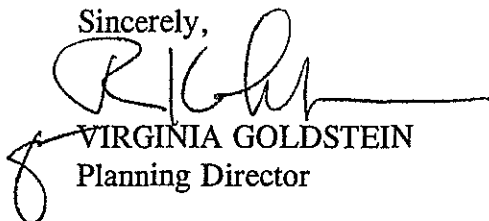
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Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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xc: West Hawaii Office