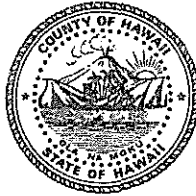


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL

7099 3220 0000 4869 9194

PLANNING DEPARTMENT

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

February 15, 2000

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

Dear Mr. Conventz:

Variance Application WH(VAR 99-108)
Variance No. 1096
Applicant: KLAUS D. CONVENTZ
Owners: PETER CORDEIRO AND STANLEY EUGENE CORDEIRO
Request: Variance From Minimum Front Yard and Open Space Requirements
Tax Map Key: 8-1-015: 040

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby denies your variance request to allow an existing one story single family dwelling and carport with a 8.6 to 11.5 feet front yard in lieu of the minimum 20 feet front yard, and a 2.0 to 4.0 feet open space in lieu of the minimum 14 feet open space as required by Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(2)(A), and Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

The subject property is located at Keopuka Kai Subdivision, Lot 3-R, at Keopuka, South Kona, Hawaii, Tax Map Key: 8-1-015:040.

The Planning Director has concluded that the variance request from the minimum required front yard and open space setback requirements be denied based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 10,960 square feet of land area.
2. The subject single family dwelling was issued the following building permits:
 - a. Building Permit No. K07906 opened on December 22, 1986 and closed on February 19, 1987 for the construction of a single family dwelling.

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Mr. Klaus D. Conventz

Page 2

February 15, 2000

- b. Building Permit No. K08206 opened on April 27, 1987 and closed on May 7, 1987 for the construction of a shed.
3. A survey map prepared by KKM Surveys on December 12, 1999 shows the following property boundary markers were found on the property:

- "• On the northeasterly (front) corner of the property, a ½" pipe in concrete was found.

Preceding clockwise:

- "• On the southeasterly (side) of the property, a ½" pipe was found.

- "• On the southwesterly (rear) corner of the property, a ¾" pipe in concrete was found.

- "• On the northwesterly (rear) corner of the property, a ½" pipe in concrete was found."

4. The survey map shows the one story single family dwelling and carport with a 8.6 to 11.5 feet front yard in lieu of the minimum 20 feet front yard. As such, the dwelling and carport encroach 8 feet 6 inches to 11 feet 4-7/8 inches into the required 20 feet front yard.
5. The survey map also shows the one story single family dwelling and carport with a 2.0 to 4.0 feet open space in lieu of the minimum 14 feet open space. As such, the dwelling and carport encroach 10 feet to 12 feet into the required 14 feet open space.
6. The survey map shows a chain link fence extends between 2.8 and 13.6 feet into the Keopuka Place right-of-way.
7. There are two sheds located to the rear of the property which are located within the minimum required 20 feet rear yard setback. There are no building permits for these structures.
8. A site inspection shows the single family dwelling constructed with post and piers, with an attached roof line for the 2 car carport.
9. The topography of the land does not prohibit the construction of the single family dwelling within the required minimum setbacks.

Mr. Klaus D. Conventz

Page 3

February 15, 2000

10. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
11. 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 and carport in 1986.
12. There are no plans available which show the encroachments were approved as constructed.
13. The Department of Public Works, Building Division and the Planning Department are not responsible for ensuring that any proposed structure will comply with the required setbacks. The responsibility for ensuring that the structures are situated in accordance with the approved construction plans and building permit rests with the landowner.
14. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1986 when the dwelling and carport were constructed.
15. The variance application was filed with the Planning Department on December 27, 1999.

There were four letters of objections from the following adjacent and surrounding property owners:

- a. Mr. Taro Fujimori: (See Exhibit A - Letter dated December 29, 1999 and February 14, 2000)
- b. Mr. and Mrs. Michael J. and Rae A. Godden: (See Exhibit B - Letter dated January 4, 2000 and February 14, 2000)
- c. Mr. and Mrs. Antonio and Margaret Amoguis: (See Exhibit C - Letter dated December 29, 1999 and February 14, 2000)

There is no evidence submitted which shows or justifies the necessity for approval of the variance or for any special or unusual circumstances related to the property. Therefore, considering the foregoing facts, the Planning Director has determined that there are no 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.

Mr. Klaus D. Conventz

Page 4

February 15, 2000

ALTERNATIVES

1. The subject property is a rectangular shaped parcel at the end of a cul-de-sac with a front and rear yard, and two side yard setbacks as required by the Zoning Code.
2. The property is similar in size with all surrounding properties in this subdivision.
3. The surrounding area consists of single-family residences. The subject parcel is situated in the Keopuka Kai Subdivision. The zoning pattern in the vicinity is a mixture of Single Family Residential (RS-10), Agricultural -5 acre (A-5) and Village Commercial (CV-10).
4. The parcel is large enough that any structures could have been constructed by meeting the minimum Zoning Code setback requirements.
5. At the time the single family dwelling was constructed the survey boundary markers clearly delineated the property boundary, allowing the contractor to construct the single family dwelling within the minimum setback requirements.
6. In addition to the clear setback violations, two sheds were constructed without building permits within the rear yard, a finding that construction occurred with blatant disregard for legal setback requirements.

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. If the single family dwelling and carport plans had been submitted with the encroachments, the plans would not have been approved. In this instance, the encroachments of the single family dwelling and carport into the front yard, open space and county right-of-way were self imposed.

The Zoning Code is applied and administered within the framework of the general plan which is a long range, comprehensive, general plan prepared to guide the overall future development of the County. Within this frame work, the Zoning Code purpose is to promoting health, safety, morals, or the general welfare of the County, and regulate and restrict the height, size of buildings, other structures, the percentage of a building site that may be occupied, off-street parking, setbacks, size of yards, courts, open spaces, density of population, location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The encroachments of the single family dwelling and carport are not suitable and create features or conditions likely to be harmful or dangerous to the health, safety and welfare of

Mr. Klaus D. Conventz

Page 5

February 15, 2000

future residents with the subdivision or of the surrounding neighborhood. The Zoning Code requires a minimum 20 feet front yard and 14 feet open space, in this particular case, the encroachments visually and physically impact and are adverse to any adjacent properties.

Based on the foregoing findings, this variance request would not 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. In addition, should this variance application be approved, without regard to the required minimum setbacks, it may lead to similar requests by owners of surrounding properties.

This variance request is therefore denied and subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with all stated conditions of this denial.
2. The denial 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 applicant shall remove all encroachments within the County right-of-way.
4. The applicant shall relocate the single family dwelling and carport within the minimum required front yard and open space setback.
5. The applicant shall remove the sheds located within the rear yard setback.
6. The denial of this variance constitutes a violation of the Planning Department's Rule No. 9, Enforcement of Zoning Code and Provisions for Enforcement, which may include Penalty Fines for the Zoning Violation shall be assessed.
7. All other applicable State and County rules and regulations shall be complied with.

The Planning Director's decision is final, except that within thirty days after the date of the written decision, the applicant may appeal such action to the Board of Appeals. Effective March 3, 1999, the Hawaii County Board of Appeals are be required to hear and determine appeals from final decisions of the Planning Director. This is pursuant to a recent amendment to the County Charter as adopted by the voters of the County of Hawaii at the general election held on November 3, 1998.

Mr. Klaus D. Conventz

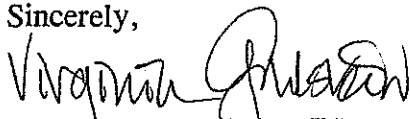
Page 6

February 15, 2000

An application for an appeal to the Board of Appeals is attached for your convenience.

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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Enclosure

xc: West Hawaii Office