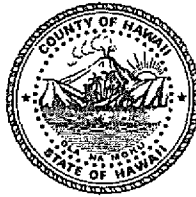


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL

7099 3220 0000 4868 7634

PLANNING DEPARTMENT

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

April 28, 2000

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

Dear Mr. Conventz:

Variance Application WH(VAR 00-16)
Variance No. 1109
Applicant: KLAUS D. CONVENTZ
Owner: MARY A. HASEGAWA
Request: Variance From Minimum Side Yard Open Space Requirements
Tax Map Key: 7-4-016:045

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow a two story single family dwelling and gazebo with a 2.9 to 3.5 feet side yard open space in lieu of the minimum 4 feet open space as required by Ordinance 96-160, Chapter 25, Article 4, Division 4, Section 25-4-44(a), 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 Harbor View Vista Condominium Project, Unit 1, Lot 45 of Kona Chocho Estates, Unit 1 File Plan 1535, being a portion of Grant 3765 to Keaka at Kealakehe, North Kona, Hawaii, Tax Map Key: 7-4-016:045.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 11,718 square feet of land area.
2. The subject Harbor View Vista Condominium Project was issued the following building permits:

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- a. Building Permit No. 905434 opened on March 16, 1990 for the construction of a single family dwelling. The permit remains open. This single family dwelling is situated on Unit 2 and is not a part of this variance.
 - b. Building Permit No. 906547 opened on November 23, 1990 and closed on September 13, 1991 for the construction of an ohana dwelling. This single family dwelling is located on Unit 1 and is the subject of the variance request.
 - c. Building Permit No. 906548 opened on November 23, 1990 and closed on September 19, 1991 for the construction of a single family dwelling.
 - d. Building Permit No. 915693 opened on June 5, 1991 and closed on September 13, 1991 to increase width of stairs and landing of dwelling.
 - e. Building Permit No. 915694 opened on June 5, 1991 and closed on September 19, 1991 to increase width of stairs and landing of dwelling.
3. A survey map prepared by Wes Thomas Associates on February 14, 2000 shows the two story single family dwelling and gazebo with a 2.9 to 3.5 feet side yard open space in lieu of the minimum 4 feet open space. As such, the dwelling and gazebo encroach 6 inches to 1 foot 1-1/4 inches into the required 4 feet open space.
 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 1990.
 6. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1990 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 10 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.

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8. The two gazebos that are located on the northern end of the property were not constructed with the proper building permits. The smaller gazebo has been removed by the applicant. The applicant shall apply for a building permit to allow the larger gazebo to remain on the property.
9. The variance application was filed with the Planning Department on February 17, 2000.

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 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.
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 gazebo 6 inches to 1 foot 1-1/4 inches into the required 4 feet open space. This encroachment into the open space 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 4 feet open space 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.

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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.

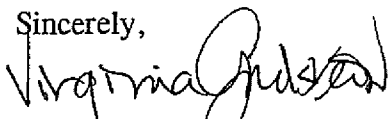
This variance request is approved, subject to the following conditions:

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. The applicant shall apply for a building permit for the gazebo.
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 at 327-3510.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\74016045\vhasegawa.app

xc: West Hawaii Office