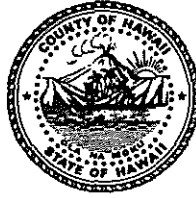


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**

7099 3220 0000 4868 7627

**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 00-17)  
Variance No. 1110  
Applicant: KLAUS D. CONVENTZ  
Owner: RAYMOND L. LAGGER  
Request: Variance From Minimum Side Yard and Open Space Requirements  
Tax Map Key: 6-2-008:001

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow a one story single family dwelling with garage, pool, lanais and bar area with a 10.5 feet to 14.5 feet in lieu of the minimum 10 feet side yard approved under Variance No. 325; a 3.0 feet to 9.7 feet in lieu of the minimum 5 feet open space approved under Variance No. 325, Ordinance 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(3)(B), and 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 Fairways at Mauna Kea North, Lot 1, File Plan 1753 at Ouli, Waimea, South Kohala, Hawaii, Tax Map Key: 6-2-008:001.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

1. The subject property consists of 37,529 square feet of land area.
2. The subject single family dwelling was issued the following building permits:

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- a. Building Permit No. 905825 opened on June 12, 1990 and closed on June 3, 1993 for the construction of a single family dwelling.
  - b. Building Permit No. 905826 opened on June 12, 1990 and closed on July 17, 1991 for the construction of a swimming pool.
  - c. Building Permit No. 915847 opened on July 15, 1991 for the construction of a swimming pool.
3. Variance No. 325 was approved by the Planning Director on April 5, 1988 to allow the construction of a single family dwelling with a side yard of 10 feet in lieu of the minimum 15 feet side yard. This variance was subject to the following condition: "The construction within the County standard side yards shall be limited to four (4) protrusions as shown on the site plan dated December 21, 1987, which was submitted to this office as part of the subject variance application: three (3) totaling 75 square feet and one (1) totaling 55 square feet."
  4. A survey map prepared by Wes Thomas Associates on January 26, 2000 shows the one story single family dwelling, pool and lanais with a 10.5 feet to 14.5 feet in lieu of the minimum 10 feet side yard approved under Variance No. 325. As such, the dwelling and improvements encroach 6 inches to 4 feet 6 inches into the 10 feet side yard.
  5. The survey shows the one story single family dwelling and improvements with a 3.0 feet to 9.7 feet in lieu of the minimum 5 feet open space approved under Variance No. 325. As such, the dwelling and improvements encroach 2 feet to 4 feet 8-3/8 inches into the required 5 feet open space.
  6. When the building permits were approved, the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
  7. 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.
  8. 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.
  9. 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 he had no

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control over and has honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.

10. The variance application was filed with the Planning Department on February 24, 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 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 6 inches to 4 feet 6 inches into the 10 foot side yard and 2 feet to 4 feet 8-3/8 inches into the required 5 feet open space.

This encroachments into the side yard and 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 10 foot side 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.

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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. Building permit number 915847 shall be finalized with the Department of Public Works-Building Division.
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

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xc: West Hawaii Office