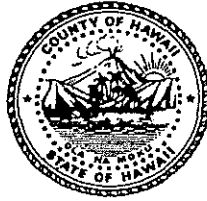


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

CERTIFIED MAIL

7000 0600 0024 2904 8581

February 22, 2001

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

Dear Mr. Conventz:

Variance Application WH(VAR 00-077)

Variance No. 1183

Applicant: KLAUS D. CONVENTZ DBA BAUMEISTER CONSULTING

Owners: CHARLES P. CONNORS & PHYLLIS FECHER-CONNORS

Request: Variance From Minimum Side Yard and Open Space Requirements

Tax Map Key: 7-5-023:032

After reviewing your application and the additional information submitted on its behalf, the Planning Director certifies the approval of your variance request to allow an existing one-story single family dwelling with a 5.3 to 5.7 feet side yard in lieu of the minimum 8 feet side yard, and a 3.7 feet side yard open space in lieu of the minimum 4 feet side yard open space as required by Ordinance No. 96-160, Chapter 25, Article 5, Division 1, Section 25-5-7(a)(1)(B), Ordinance 97-88, and Article 4, Division 4, Section 25-4-44(a).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance.

The subject property is located at Aloha Kona Subdivision, Lot 366, File Plan 871 at Hienaloli 5th and 6th, North Kona, Hawaii, Tax Map Key: 7-3-023:032.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of 8,650 square feet of land area.
2. The subject dwelling was issued the following building permits:
 - a. According to Real Property Tax Office records, Building Permit No. 039071 was issued on June 21, 1968, for the construction of a one-story single family dwelling with lanai and carport. It is not known when this structure passed final inspection as Department of Public Works, Building Division records are unavailable.
 - b. Building Permit No. H03045 was issued on July 12, 1978, for a 10 feet by 10 feet enclosure of an existing deck to enlarge a bedroom and screen existing porch and add door to existing dwelling. This addition passed final inspection and the permit was closed on August 31, 1978.
3. A survey map prepared by Kevin McMillen of KKM Surveys, dated August 2, 2000, shows the westerly side of the dwelling to be 5.3 to 5.7 feet from the westerly side lot line. As such, the dwelling encroaches 2 feet, 3-5/8 inches to 2 feet, 8-3/8 inches into the minimum required 8 feet side yard.
4. The survey map shows the westerly eaves of the dwelling to be 3.7 to 4.1 feet from the westerly side lot line. As such, the westerly eaves of the dwelling encroach 3-5/8 inches into the minimum required 4 feet side yard open space.
5. The survey map shows a concrete rock masonry (CRM) wall at the northwesterly corner extending 4-7/8 inches into the subject property from the adjoining Lot 367.
6. The survey map shows a CRM wall on the northerly side of the dwelling extending 9 feet, 4-7/8 inches into the Aloha Kona Drive right-of-way.
7. The survey map shows a chain link fence along the northerly lot line to be within the subject property at its northwesterly corner, then crossing the lot line and extending as much as 4 feet into the Aloha Kona Drive right-of-way. The survey map shows that the same fence turns and continues along the easterly lot line, extending as much as 3 feet, 8-3/8 inches into the Muku Place right-of-way.
8. The survey map shows a dry stack wall along the southerly side lot line extending as much as 2 feet, 9-5/8 inches into the Muku Place right-of-way.

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9. When the building permits for the single-family dwelling were approved, it is believed that the owner received all of the necessary Department of Public Works, Building Division approvals for the dwelling.
10. When approved by the Planning Department, the plans would have had to shown that all minimum required setbacks were going to be adhered to for the dwelling in 1968 and again in 1978.
11. There appears to have been a siting error made at the time of the deck enclosure and bedroom expansion in 1978. No other evidence has been found to show otherwise.
12. It has been over 32 years since the construction of the existing dwelling was approved by the County, and 22 years since the above-referenced improvements were approved by the County. The owners are trying to resolve a situation over which they had no control and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the dwelling and improvements.
13. The variance application was filed with the Planning Department on September 14, 2000.
14. The County Department of Public Works, Engineering Division, memorandum dated October 11, 2000, states:

"We have reviewed the subject application and offer the following comment:

"Any encroachments within the County right-of-way should be removed.

"If you have questions please contact Kiran Emler of our Kona office at 327-3530."
11. The State Department of Health memorandum dated October 6, 2000, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems need to be maintained."

No objections to the subject variance application have been received from surrounding property owners or leasees of record, or from the general public.

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 owners of 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 to conform to 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 owner 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. The westerly side of the dwelling encroaches 2 feet, 3-5/8 inches to 2 feet, 8-3/8 inches into the minimum required 8 feet side yard. The westerly eaves of the dwelling encroach 3-5/8 inches into the minimum required 4 feet side yard open space. As such, these encroachments do not significantly compromise the intent and purpose of the Zoning Code to provide for adequate air and light circulation.

Therefore, while the Zoning Code requires a minimum 8 feet side yard and 4 feet side yard 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.

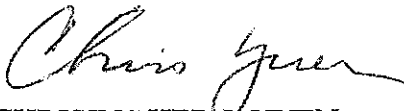
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2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. All encroachments within the County right-of-way shall be removed.
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 Pamela Harlow of my staff at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

PLH: plh
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xc: West Hawaii Office