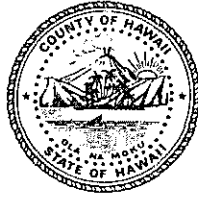


Harry Kim
Mayor



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

December 5, 2001

Mr. Klaus D. Conventz
dba Baumeister Consulting
P. O. Box 2308
Kailua-Kona, HI 96745

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1228 WH (VAR 01-015)

Applicant: KLAUS D. CONVENTZ
Owners: ALBERT & TIARE POLICE
Request: Variance from Minimum Yards
and Open Space Requirements,
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-023:037

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1228 allows portions of a dwelling to remain on the subject property "AS BUILT" with a minimum 9.5 to 9.2 feet side yard and corresponding side yard open space requirements according to the applicant's site plan dated May 12, 2000. The variance is from the Minimum yards and Open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

BACKGROUND AND FINDINGS

1. **Location.** The subject property containing 17,535 square feet is Lot 15 of the Kona Coastview Subdivision, Unit IV, File Plan 975, Kalaoa 3rd, North Kona, Hawaii.

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The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC). The property's land area is below the minimum 5 acre lot size area required for the A-5a zone designation and is therefore deemed "non-conforming".

According to ohana dwelling file (OD 89-148), two (2) single-family dwellings were permitted and built on the subject TMK property.

2. **Application**. The applicant submitted "SPECIAL & UNUSUAL CIRCUMSTANCES" dated January 31, 2001 with the subject variance application. This written explanation states in part:

"The 1-story Ohana dwelling was built under Building Permit 915607 in 1991 under previous owner's contractor.

Albert & Tiare Police purchased the property in 1994 (Deed Doc. 94-0088726). They were unaware that there was any problem, when the condo map no. 3120 by Ali'i Architects revealed the violations on May 12, 2000.

The violation relative to the West boundary ranges from 6" at the Southwest corner to 9.6" at the Northwest corner of the house, the attached covered lanai is in compliance of the code.

It appears that it was simply a staking error by contractor, and there is no evidence of malice and intent, since the violation did not benefit owner or contractor.

Due to the small nature of the encroachment , which is also not visually perceptible from neighbor lots or public view, owner and applicant request respectfully the granting of the variance, since a design correction would effect the entire westerly wall, with costs beyond the financial means of the owners, while the provisions of Section 25-2-51 would also fully apply."

3. **Variance Application-Site Plan**. The applicant's site plan drawing, drawn to scale and dated May 12, 2000, was certified by Ali'i Architects and identifies the location of existing dwelling(s) and other site improvements.
4. **Building Permit Records**. A copy of the approved original detailed building construction plans to construct the existing dwelling(s) and other site improvements on the property were not submitted with the variance application.

Note: Any free-standing perimeter walls, retaining walls, or other perimeter wall features, which are less than six (6) feet in height, respectively; and, located on and within the subject property or along the common boundary lines do not require any building permit(s). Any existing perimeter walls or fences straddling TMK boundary lines or any boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

5. **Agency Comments and Requirements:**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated January 29, 2001 stating:

"This is to certify that Kalaoa Mt Hale c/o Albert Police (Owner-of-record) has paid all real property taxes due the County of Hawaii up to and including "12-31-2000"

- b. The State Department of Health (DOH) memorandum dated April 3, 2001, in the subject variance file states:

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

- c. The Department of Public Works (DPW) memorandum dated April 9, 2001, states in part:

"We have reviewed the subject application and have no comment:

1. Only a licensed surveyor may legally set and verify property lines; since the site plan was submitted without the benefit of a licensed surveyor, we are unable to verify the accuracy of any dimensions or to determine if any encroachments exist within the County ROW.

If you have any questions please contact Kiran Emler of our Kona office at 327-3530."

6. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department on January 31, 2001 and March 22, 2001, respectively. For the record, it appears that the first and second notice was mailed from Holualoa on January 31, 2001 and March 22, 2001, respectively, by the applicant

7. **Comments from Surrounding Property Owners or Public.** No other written agency comments or objections from the surrounding property owners or the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during the sale of the subject property. The applicant submitted a recent survey map/site plan that identifies the location of the existing dwelling and other site improvements. The site plan identifies the distance between portions of the dwelling and attendant roof eaves from the affected boundary line(s). Portions of the existing were constructed into minimum yards and respective open space requirements. It appears the previous and current owner(s) were unaware of the building encroachment problem.

Therefore, considering the foregoing facts and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the current owner/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

There are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the applicant to address and correct the existing building encroachments include the following actions: Removing the existing building encroachments, relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code, and/or other similar design alternatives, etc.; and, would be uneconomical at this time. The removal of the building encroachments and attendant roof eave(s) constructed by the previous owner(s) may disrupt the dwelling's structural integrity and relationship to and between other existing site improvements.

The applicant, on behalf of the current owner(s), is trying to address and resolve building encroachments that were built and established on the subject property by the previous owner(s). No evidence has been found to show indifference or premeditation by the previous owner(s) to deliberately create or intentionally allow the building encroachment problems to occur.

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The Planning Department acknowledges there may be other design or building alternatives available to the applicant and owners beyond those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant and current owner(s) when a more reasonable alternative is available by the granting of the subject variance request.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s) and boundary/property lines. It appears that the existing dwelling was constructed under valid building permit(s) issued to the previous owner(s). It appears that the building inspections of the premises, during building construction and throughout the life of the building permit(s) did not disclose any building encroachments or setback irregularities. The applicant and current owner(s) became aware of the encroachment problems during escrow (DROA) to sell/purchase the property. The applicant and current owner(s) are trying to resolve building encroachment problems that were disclosed after a modern survey map was presented for escrow purposes.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within those affected yards and respective open spaces on this non-conforming sized property (lot).

It appears that existing building encroachments into the affected yard(s) and respective open spaces are not physically and visually obtrusive from adjacent property(s) or the existing rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears the existing building (dwelling) encroachment(s) within those yards and open spaces were building mistake(s) or misinterpretation of the minimum building yards or boundary line(s) by the previous owner's contractor. It appears that building inspections of the property during the life of the building permit(s) issued by the County or other agencies did not discover any building encroachment problem(s) or reveal and disclose any irregular building setback problems. Therefore, it is felt that the existing dwelling encroachments within said yards and open spaces will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by certified letter dated March 20, 2001. Additional time to allow the Planning Director to understand and address agency comments was required. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than May 31, 2001. (Reference is made to a copy of a letter and consent, dated March 22, 2001, in the subject variance file).

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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, the variance request 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of the existing dwelling and roof eaves will not meet Chapter 25, the Zoning Code's, minimum yard and open space requirements. The approval of this variance allows the existing dwelling(s) and permitted building improvements identified a site plan submitted with the variance application, dated May 12, 2000, to remain on the subject TMK property.
4. No variance from Chapter 25, the Zoning Code or Chapter 23, Subdivisions shall be granted to permit further expansion of the existing ohana dwelling or new building additions will be permitted.
5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office - Kona
Planning Dept. - Kona
OD 89-148 File