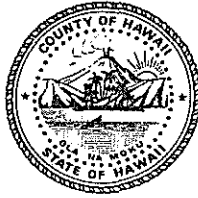


Harry Kim
Mayor



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

February 1, 2001

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1252 WH (VAR 01-039)

Applicant: KLAUS D. CONVENTZ
Owners: BRUCE P. CLIFFORD, ET AL.
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-1-002:007, Lot 39

After reviewing your application, site plan, and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1252 allows portions of the water tank and other related accessory dwelling improvements, "AS BUILT", to remain on the subject property with a minimum 19.2 feet rear yard and 2.1 feet side yard in lieu of the minimum 20 feet rear yard and 10 feet side yard and corresponding side yard open space requirements according to the variance application's site plan dated May 1, 2001. The variance request is from Lot 39's minimum rear yard and side yard and minimum side yard open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (A) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

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Mr. Klaus D. Conventz

Page 2

February 1, 2001

BACKGROUND AND FINDINGS

1. **Property Description and Location.** The subject property, containing 12,312 square feet, is Lot 39, being a portion of Royal Patent 2910 to Yates, situated at Kalukalu, South Kona, Hawaii.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by Land Use Commission (LUC).

2. **Variance Application/Applicant's Explanation-Request.** The applicant, on behalf of the owners, submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee.
3. **Variance Application-Site Plan.** The applicant's map or "AS-BUILT" site plan drawing, drawn to scale, was surveyed and prepared by Kevin McMillen, LPLS. The site plan, dated and signed May 1, 2001 identifies the location of existing dwelling(s), water tank(s), and other accessory dwelling improvements. The site plan denotes a building or dashed line indicating the limit where buildings or structures may not be built. A small portion of a water tank and other dwelling improvements encroach within Lot 39's minimum 20 feet rear yard and 10 feet side yard and corresponding side yard open space requirement.

In addition, the site plan identifies a CRM (Dry Stack Rock Wall) along the property's rear boundary lines which may encroach into adjoining property (lots). Any encroachments should be addressed and resolved between the applicant and the affected parties or between legal property owner(s).

The site plan does not denote location or identify any existing cesspool(s) or Individual Wastewater System(s) (IWS).

4. **Building Permit Records.** The copy of the approved original detailed building construction plans to construct the existing dwelling, accessory structures, and other wall and landscaping improvements were not submitted with the variance application.

Mr. Klaus D. Conventz

Page 3

February 1, 2001

5. Agency Comments and Requirements.

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated May 2, 2001 stating:

"TMK(s) (3)/8-001-002-007"

"This is to certify that Bruce Clifford (Owner-of- record) has paid all real property taxes due the County of Hawaii up to and including 6/30/01"

- b. The State Department of Health (DOH) memorandum dated May 24, 2001, states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- c. The Department of Public Works (DPW) memorandum dated June 6, 2001 states in part:

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

1. Please refer to the attached Building Division comments dated May 25, 2001.

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

The attached DPW memorandum dated May 25, 2001 includes the following comments and statements:

"We oppose the approval of the application for the reasons noted below.

Building permit 015439 & electrical permit EK02518 were never finalized."

6. Notice to Surrounding Property Owners. Proof of mailing a first and second notice was submitted to the Planning Department (Kona Office) on May 3, 2001 and May 23, 2001, respectively, by the applicant.

Mr. Klaus D. Conventz

Page 4

February 1, 2001

7. **Comments from Surrounding Property Owners or Public.** No other written agency comments or objections from surrounding property owner(s) to the variance application were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The water tank and other building encroachments issues were discovered after a modern survey and "As-Built" map dated May 1, 2001 was drawn. The applicant submitted this recent survey map/site plan which identifies the location of the existing dwellings and other site improvements. This site plan identifies distances between the water tank and other accessory dwelling improvements from the affected boundary lines. According to the information provided by the applicant, it appears that a "staking error" caused one of two existing water tanks and other nearby improvements to be constructed within the property's rear yard and respective side yard.

Therefore, considering the variance background information and present 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 owners 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 owners. Alternatives available to the applicant or owners to address and correct the existing building encroachments include the following actions:

1. Remove the existing building encroachments that encroach into the affected rear and side yards.
2. Redesign and relocate the water tank and other improvements to fit within the correct building envelope prescribed by the Zoning Code and/or other design and remedial building alternatives.
3. Consolidate Lot 39 with adjoining lots and resubdivide the resultant lot to modify the property geometry and/or change the metes and bounds descriptions in accordance with the minimum yard requirements of the Zoning Code.

Mr. Klaus D. Conventz

Page 5

February 1, 2001

To require or impose removal of these encroachments or modification of accessory dwelling improvements would seem unreasonably harsh and uneconomical at this time. The removal of the water tank or relocation of the accessory dwelling improvements may disrupt the water tank's structural integrity and disrupt the existing building orientation and relationship between each other.

The option to acquire and consolidate a portion Lot 39 with adjoining lots and resubdivide pursuant to Chapter 23, Subdivisions, was not addressed or considered by the applicant/owners.

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

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 dwellings, water tanks and other accessory dwelling improvements were constructed under a building permit(s) issued by the DPW-Building Division. It appears that the building inspections of the premises, during building construction and throughout the life of some building permit(s) did not disclose any building encroachments or setback irregularities. It appears that the applicant or current owners were not aware of the encroachment problems until the survey of the property was performed. The current owners are trying to resolve building encroachment problems created by a construction siting error or misinterpretation of the boundary and building setbacks.

Mr. Klaus D. Conventz
Page 6
February 1, 2001

It appears that existing building encroachments into the affected yards are not physically and visually obtrusive from adjacent property or 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 water tank encroachment within the rear yard was a building mistake committed during construction of the water tank. Inspection 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 or unusual building setback problems or issues. Therefore, it is felt that the existing dwelling encroachments will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by certified letter dated May 17, 2001. Additional time to allow the Planning Director to understand and address agency comments was required. The applicant, on behalf of the owners agreed to an extension of time to February 8, 2002 to render a decision on the subject variance request.

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.

Mr. Klaus D. Conventz

Page 7

February 1, 2001

3. Portions of the existing water tank and other permitted accessory structures denoted within the Lot 39's rear yard and respective side yards, according to the applicant's site plan dated May 1, 2001, will not meet Chapter 25, the Zoning Code's minimum rear yard and side yards and corresponding side yard open space requirements. The approval of this variance is limited only to building improvements constructed under previous building permits issued by the DPW-Building Division. The approval of this variance does not address the wall and/or landscape encroachment issues on Lot 39 or adjoining TMK property(s).
4. The applicant shall contact the DPW-Building Division to address the outstanding building permits (BP No. 015439 and EK02518) cited by the DPW-Kona Office. The outstanding building and related construction permit shall be "finaled" or closed by the DPW prior to issuance of any further building permits issued to the subject TMK property.

No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject property, subject to provisions of the Zoning Code or State Law, which may change from time to time.

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.

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

WRY:cps

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xc: Real Property Tax - Kona
Planning Dept. - Kona