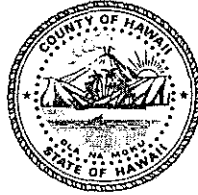


Harry Kim
Mayor



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 12, 2001

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1242 WH (VAR 01-040)

Applicant: KLAUS D. CONVENTZ
Owners: JAMES T. POSNER TRUST, ET AL.
**Request: Variance from Minimum Yards
and Open Space Requirements,
Pursuant to Chapter 25, Zoning**
Tax Map Key: 6-9-005:015, Lot 39

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No.1242 allows portions of a dwelling to remain on the subject property "AS BUILT" with a minimum feet 19.68 feet rear yard (in lieu of the required 20.00 feet rear yard) and corresponding minimum rear rear yard open space of 11.66 feet to 12.68 feet (in lieu of the required 14.00 feet rear yard clear space) in accordance with the applicant's site plan dated April 10, 2001. The variance is from the Minimum yards and Open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

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BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 16,472 square feet is Lot 39, Puako Beach Lots, situated at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-9-005:o15, Lot 39.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC). The property's is located within an area designate Special Management Area (SMA) by the County.

2. **Application.** The applicant submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee to the Kona Planning Department office on May 7, 2001.
3. **Site Plan.** The applicant's site plan, drawn to scale and dated April 10, 2001, was prepared by Don McIntosh Consulting and identifies the location of the existing "2 Story House" on the subject TMK property.

Note: In addition to the existing "house" or dwelling location, this site plan also identifies the location of existing "Blockwall" and "chainlink" improvements within Lot 39 and identifies a "Government Beach Reservation" in front of the rear boundary line. Any wall or fence improvements straddling or other boundary encroachment problems straddling boundary lines must be addressed and resolved by the affected parties, and are not addressed by this variance.

4. **Building Permit Records.** County records indicate that all building and associated construction permits issued by the DPW-Building Division to the subject TMK property were closed.
5. **Agency Comments and Requirements:**
 - a. **Real Property Tax Office.** The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated April 3, 2001 stating:

"This is to certify that Yutaka Tatsuno ETAL (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including June 30, 2001."

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- b. **Department of Health.** The State Department of Health (DOH) memorandum dated May 29, 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. **Department of Public Works.** The Department of Public Works (DPW) memorandum dated May 30, 2001, states in part:

"We have reviewed the subject application and have no comments."

6. **Notice to Surrounding Property Owners.** According to the applicant's proof of mailing, the applicant mailed the first and second notice to surrounding owners on May 5, 2001 and May 23, 2001, respectively.
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's wall and "open lanai" from the affected boundary line(s). Portions of the existing 2-story dwelling and open patio were constructed into the property's minimum rear yard and respective rear yard open space requirements. It appears the previous and current owner(s) were unaware of the building encroachment problem. 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.

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.

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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

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the applicant or current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove or truncate the "corner" of the living space and attendant open lanai that encroach into the affected rear yard and minimum rear yard open spaces required.
2. Redesign and relocate the existing 2-story dwelling to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose removal of this encroachment and the necessary changes to the attendant open lanai/roof eave(s) would seem unreasonably harsh and uneconomical at this time. The removal of the existing encroachments or relocation of the dwelling may disrupt the dwelling's structural integrity, change internal room lighting and air circulation, and change the building's overall building geometry and exterior character.

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. These purposes would not be undermined by this variance since the existing building encroachments into the affected rear yard and respective open spaces are not physically and visually obtrusive from adjacent property(s) or existing rights-of-way, and do not depreciate or detract from the character of the surrounding neighborhood, public uses (Government Beach Reservation), and the existing and surrounding land patterns.

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.

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DETERMINATION

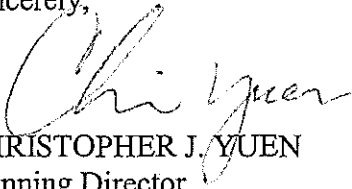
This variance request is approved subject to the following conditions:

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 two (2) story dwelling attached "Open Lanai" will not meet Chapter 25, the Zoning Code's, minimum yard and open space requirements. The approval of this variance allows the existing "2 Story House" and "Open Lanai" identified on the applicant's site plan, dated April 10, 2001, to remain on the subject TMK property, "AS-BUILT".
4. No permit to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK 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.

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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

WRY:cps
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xc: Real Property Tax Office - Kona
Planning Dept. - Kona