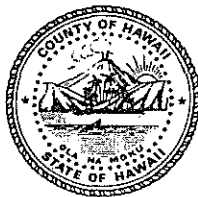


Harry Kim
Mayor



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

January 25, 2001

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1251 WH (VAR 01-049)

Applicant: KLAUS D. CONVENTZ
Owners: ARNO AGERBEEK, ET AL.
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-4-018:108, Lot 179

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. 1251 allows portions of the existing 2-story dwelling, "AS BUILT" to remain on the subject property with a minimum 7.58 feet side yard and 3.1 feet side yard open space between the open stairwell and a side boundary line in lieu of the minimum 8 feet side yard, and 4 feet side yard open space requirements, respectively, according to the variance application's site plan dated June 4, 2001. The variance request is from Lot 179's minimum yard and open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

BACKGROUND AND FINDINGS

1. **Property Description and Location.** The subject property, containing 7,522 square feet, is Lot 179 of "Kona Chocho Estates", Unit 2, File Plan 1581, situated at Kealakehe, North Kona, Hawaii.

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The property is zoned Single-Family Residential (RS-7.5) 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 site plan drawing, drawn to scale, was surveyed and prepared by Donald C. McIntosh, LPLS. The site plan, dated and signed June 4, 2001 identifies the location of existing 2-story dwelling and building line indicating the limit where buildings or structures may not be built. A small portion of the dwelling's living area and stairwell encroach within a minimum side yard and corresponding side yard open space requirements.

In addition, the site plan identifies CRM walls along the property's boundary lines and other adjoining site improvements. Portions of the walls along the property's boundary may straddle common boundary lines or encroach into adjoining property (lots).

These CRM wall encroachment and other site and fence improvements less than six (6) feet in height, may not require any building permit(s). However, these existing perimeter CRM walls straddling common boundary lines or site improvements constructed beyond the property's boundary lines 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. The building permits (BP No. 07085) issued in 1985....
5. **Agency Comments and Requirements.**
 - a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated June 5, 2001 stating:

"TMK(s): (3) 7-4-018-108"

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"This is to certify that ARNO (sic)/Dorothy Agerbeek (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including June 30, 2001."

- b. The State Department of Health (DOH) memorandum dated August 15, 2001, states in part:

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

- c. The Department of Public Works (DPW) memorandum dated September 4, 2001 states in part:

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

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 (Kona Office) on June 7, 2001 and August 8, 2001, respectively, by the applicant.
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 building 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 open stairwell from the affected side boundary line. Portions of the dwelling encroach into a side and attendant side yard open space requirement. According to information provided by the applicant, these small encroachments within one of the property's side yards resulted from the a "staking error" or dwelling misplacement of the dwelling within the building envelope by the previous owners.

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

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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. Removing the existing building encroachments and attendant roof eaves that encroach into the affected side and rear yards.
2. Redesign and relocate the dwelling to fit within the correct building envelope prescribed by the Zoning Code and/or other design and remedial building alternatives.
3. Consolidate Lot 179 with adjoining Lot 180 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.

To require or impose removal of the existing dwelling encroachments and modifying the attendant open stairwell within the affected yards would seem unreasonably harsh and uneconomical at this time. The removal of the dwelling encroachments or relocation of dwelling's living area and stairway access may disrupt the dwelling's structural integrity, change internal room lighting and air circulation, and severely change the building's overall building geometry and exterior building character.

The option to acquire and consolidate a portion Lot 180 and resubdivide pursuant to Chapter 23, Subdivisions, was not addressed 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 dwelling was constructed under a building permit(s) issued to 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. It appears that the previous and current owners were not aware of the encroachment problems until the sale of the property. The current owners are trying to resolve building encroachment problems created by a construction siting error or misinterpretation of the boundary and building setbacks by the previous owner(s).

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 (dwelling) encroachment(s) within that affected side yard and side yard open space requirements was a building mistake committed by the previous owner(s). 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 setback problems. 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 August 1, 2001. Additional time to allow the Planning Director to understand and address agency comments was required. The applicant 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.

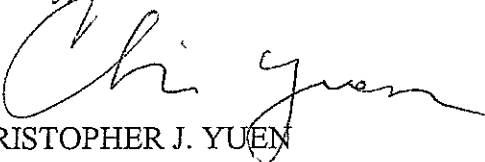
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2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of 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 on the subject TMK property will not meet the minimum side yards and corresponding side yard open space requirements of Chapter 25, the Zoning Code. The approval of this variance allows the dwelling and other permitted improvements identified on a site plan submitted with the variance application, dated June 4, 2001, to remain on the subject TMK property as built.
4. The applicant shall contact the DPW-Building Division to address and satisfy the any outstanding building permits issued by the DPW-Kona Office to the previous owners. Any outstanding building and related construction permits shall be "finalized" 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

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xc: Real Property Tax Office (Kona)
Kona Office File