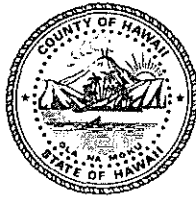


Harry Kim
Mayor



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

March 7, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1262 WH (VAR 01-075)

Applicant: KLAUS D. CONVENTZ
Owner: CHARLOTTE A. GILMAN
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-6-024:013, Lot 13

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. 1262 allows portions of the existing dwelling, "AS BUILT" to remain on the subject property with a 18.8 feet to 19.7 feet front yard in lieu of the minimum 20 feet front yard according to the variance application's site plan dated August 13, 2001. The variance request is from Lot 13's minimum 20 feet front yard, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (A).

BACKGROUND AND FINDINGS

1. **Property Description and Location.** The subject property is Lot 13, containing 11,514 square feet and located in the Kalani Makai Subdivision, Unit I, and is situated in at Holualoa 1st and 2nd, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). Two (2) dwellings were permitted to be constructed on Lot 13 pursuant to Ohana Dwelling Permit (OD 88-01) letter dated January 26, 1988.

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2. **Variance Application/Applicant's Explanation-Request.** The applicant 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 Kevin McMillen, LPLS. The site plan, dated and signed August 13, 2001 identifies the location of existing dwelling(s) and building (setback) line(s) indicating the limit where buildings or structures may not be built. Portions of the dwelling fronting Royal Poinciana Drive Extension encroach into Lot 13's front yard.

In addition, the site plan identifies CRM walls, wooden fence, and other site improvements. Portions of these walls and fences appear to straddle common boundary lines and encroach into adjoining property.

These CRM wall and fence encroachments less than six (6) feet in height, may not require any building permit(s). However, these encroachments 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 existing dwelling(s), perimeter walls/fences, and other landscaping and property improvements were not submitted with the variance application. The applicant shall confer with the Department of Public Works (DPW-Kona)-Building Division and other affected agencies to address and comply with all building permits. The applicant or current owners shall confer with the DPW to close any outstanding building permits and comply with variance conditions and agency requirements.

5. **Agency Comments and Requirements.**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated September 6, 2001 stating:

"TMK(s): (3) 7-6-24-13-1"

"This is to certify that Gilman, Charlotte (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including 12/30/2001."

- b. The State Department of Health (DOH) memorandum dated November 28, 2001, states in part:

"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 December 5, 2001, states in part:

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

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

Note: For the record, the referenced tax map key number on the DPW memorandum was noted and discussed with Kiran Emler.

6. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department (Kona Office) on September 14, 2001 and November 26, 2001, respectively, by the applicant.
7. **Comments from Surrounding Property Owners or Public.** No further agency comments or written objections from surrounding property owner(s) or public to the variance application were received.

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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 denotes the location of two (2) dwellings on Lot 13. Portions of a dwelling encroach between 4 inches to approximately 15 inches into the property's 20 feet front yard along the Royal Poinciana Drive Extension (right-of-way). It appears that the previous owners or builder constructed a small portion of that dwelling's living area into the property's front yard.

Therefore, considering the background 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 owner 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. Alternatives available to the applicant or owner to address or correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments and modifying the attendant roof eaves that encroach into the affected front yard.
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 13 with the adjacent lot(rights-of-way) to expand the lot's size and redefine the property area and minimum building lines and minimum front yard requirements.

To require or impose removal of the existing dwelling encroachments and modifying the attendant roof eave(s) within the affected yards would seem unreasonably harsh and uneconomical at this time. The removal of the dwelling encroachments or relocation of dwelling 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.

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The applicant is unable to actively pursue the consolidate/resubdivision option with the road right-of-way.

The applicant, on behalf of the current owner(s), is trying to address and resolve building encroachment of the front dwelling built and established on the subject property. No evidence has been found to show indifference or premeditation by the current applicant and 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 improvements were constructed under a series of building permit(s) issued to previous owner(s) of the subject TMK property. The building records or building inspection records were not submitted with the application. It appears that before the modern survey was performed, the current owners were not aware of the severity of the building encroachment issues or setback irregularities. It appears that the current owners were made aware of the encroachment problems during the sale of the property. The applicant on behalf of the current owner(s) is trying to resolve the property's encroachment problems created by a misinterpretation of the boundary line(s) or placement of the building improvements.

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It appears that existing building encroachments into the affected yards and respective open space requirements required by the Zoning Code 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 front yard was a building mistake which or misinterpretation of the minimum building yards or boundary line(s) by the builder or previous owner(s). Inspection of the property during the life of the building permit(s) issued by the County or other agencies are not available and there is no records or building citations addressing the existing building encroachment problem(s) or setback issues. Therefore, it is felt that the existing dwelling improvements/encroachments will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated November 21, 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 March 7, 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 dwelling nearest Royal Poinciana Drive Extension denoted on the applicant's site plan dated August 13, 2001 will not meet the minimum 20 feet front yard required by Chapter 25, of the Hawaii County Zoning Code. The approval of this variance is limited only to those dwelling improvements. The approval of this variance does not address any other dwelling encroachment issues or wall and/or landscape encroachment issues on Lot 13 or adjoining TMK property(s).
4. The applicant shall contact the DPW-Building Division to address and satisfy the any outstanding building permits issued by the DPW-Kona Office issued to the subject TMK property. All building permits issued to the subject TMK property and any further correction or construction permits issued to the subject TMK property shall be "finaled" or closed by the DPW-Building Division prior to the sale of the subject TMK property or change in title.
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 - Kona
Planning Dept. - Kona
OD 88-01 File