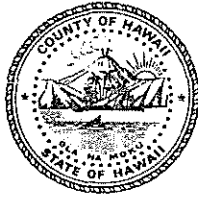


Harry Kim
Mayor



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 5, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1263 WH (VAR 01-076)

Applicant: KLAUS D. CONVENTZ
Owner: MCDANOLD FAMILY TRUST/
A. J. MCDANOLD, TRUSTEE
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-2-002:040, Lot 1

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. 1263 allows portions of the dwelling to remain on the subject TMK property, "AS BUILT", according to the variance application's plot plan or survey map dated September 27, 2001. The dwelling was constructed 29.5 feet and 17.7 feet, respectively, away from the affected front and side boundary line. The dwelling's attendant open stairs/roof eaves within the side yard are located between 12.9 to 13.6 feet from the affected side boundary line and do not meet the minimum 14 feet side yard open space requirements of the Zoning Code. The variance request is from the property's minimum 30 feet front yard, minimum 20 feet side yard, and minimum 14 feet side yard open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (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. **Property Description and Location.** The subject property, containing 1.70 acres, is Royal Patent Grant 3301, Land Commission Award 9473.2 (Apana 2) to Uwelo, and is situated at Honaunau, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and was designated Urban "U" by Land Use Commission (LUC) in the 1960's. The property is within an area designated Special Management Area (SMA).

2. **Variance Application/Applicant's Explanation-Request.** The applicant, on behalf of the owner, submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee.
3. **Variance Application-Site Plan.** The applicant's site plan map or survey map, drawn to scale, was prepared by KKM SURVEYS and was signed and dated by Kevin McMillen, LPLS on September 27, 2001. The recent survey map, identifies the location of all building(s) and other site improvements located within the property and along the property's boundary lines. Portions of the dwelling and attached carport, "As-Built", are constructed into the 30 feet front yard and 20 feet side yard and corresponding 14 feet side yard open space requirements of the Zoning Code.

In addition, the site or plot plan identifies walls straddling property lines, fence locations, and a "shed" building within the property. The wall and fence encroachments or other any other boundary issues should be addressed and resolved between the applicant and the adjoining property owner(s). The applicant is aware that the status of the shed and wall encroachments within the road right-of-way will not be included or addressed by this variance request.

The site plan does not identify or denote the location of existing cesspool(s) or Individual Wastewater System(s) (IWS). The retention and utilization of existing cesspool(s) or approved IWS system(s) shall be subject to State statutes.

4. **Building Permit Records.** The applicant contends that the dwelling and other site improvements were constructed under the following permits: BP No. 05710, 985873, and 985874.

5. **Agency Comments and Requirements.**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated October 3, 2001 stating:

"TMK(s) (3) 8-2-2-40-0001"

"This is to certify that McDanold Family (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including 12/31/01."

- 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 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). For the record, the first notice and second notice was mailed on October 5, 2001 and November 27, 2001, respectively, by the applicant.
7. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections from surrounding property owner(s) to the variance application were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The location of the existing building improvements and extent of building encroachments were not known until a recent survey map of the property dated September 27, 2001 was completed and submitted with the variance application. According to the information provided by the applicant, the current owner wants to address the dwelling and carport encroachment issues.

Therefore, considering the variance background information provided by the applicant and other 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 owner. Alternatives available to the applicant or owner to address and correct the existing building encroachments include the following actions:

1. Remove the portions of the dwelling and carport encroachments within the affected yards.
2. Redesign and relocate the dwelling 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 the subject property 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.

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

The option to acquire and consolidate a portion of the subject property with adjoining lots and resubdivide pursuant to Chapter 23, Subdivisions, was not addressed or considered by the applicant or current owner.

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The applicant, on behalf of the current owner, is addressing the status of the existing dwelling and carport improvements that were established on the subject property between 1986 and 1998. No evidence has been found to show indifference or premeditation by the applicant or current owner to deliberately create the building encroachment and permit issues.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant or owner 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 or owner 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 existing or permitted structure(s) and boundary/property lines. It appears that the existing and recent dwelling and carport addition were constructed by the current owner(s) with the necessary building permits. The existing building and uses were established on the property circa 1986. It appears that the owner(s) or builders were not aware of the encroachment issues until the survey of the property was performed. The current owner is trying to establish the building location(s), uses, and settle the building setback issues.

The existing encroachments into the respective front and side yards are not physically and visually obtrusive from adjacent property or visible from the surrounding private and public rights-of-way. It appears that the recent building improvements will not depreciate or change the uses that were established on the property in 1986. The building location(s) will not depreciate or change the character of the surrounding neighborhood and surrounding land patterns. It appears that the county agencies were unaware of any building encroachment problem(s) or building permit issues. Therefore, it is felt that the dwelling and carport encroachments into the respective front yard, side yard, and attendant side yard open spaces, "AS-BUILT", will not detract or change the character of the immediate neighborhood or the subdivision.

The revised variance application was acknowledged by letter dated November 21, 2001. Additional time to allow the Planning Director to consider the application 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.
2. The applicant, owner, 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 farm dwelling and carport encroach the front and respective side yards. The approval of this variance acknowledges the building location(s) and permits recent and proposed building improvements to remain on the property, "AS BUILT", according to the variance application's site or plot plan map dated September 27, 2001.
4. The applicant shall contact the DPW-Building Division to address any outstanding building permits issued to the property or secure any building permits to allow existing building improvements identified on the applicant's plot plan or survey map dated September 27, 2001. Any outstanding Building permits issued to the subject TMK property shall be "finaled" or closed by the DPW-Building Division prior to any change in property tenure or property title.

No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the 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.

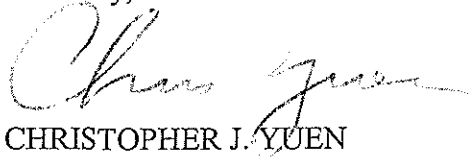
Mr. Klaus D. Conventz

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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:RRT:cps

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