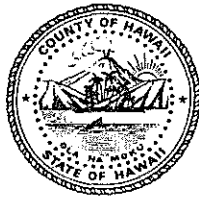


Harry Kim
Mayor



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 8, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1253 WH (VAR 01-077)

Applicant: KLAUS D. CONVENTZ
Owner: B. P. BISHOP ESTATE/DANIEL K. WARD
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-4-004:016, Lot 195A

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. 1253 allows portion and new additions to a dwelling constructed on the property prior to 1967 to remain, "AS BUILT" according to the variance application's site plan dated June 18, 2001. The farm dwelling is situated a minimum 7.8 feet side yard and minimum 4.5 feet open side yard from the affected side boundary line in lieu of the minimum 20 feet side yard and minimum 14 feet side yard open space requirements. The variance request is from the property's minimum side yard and minimum side yard open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 is Lot 195-A of Honaunau Subdivision, Section "C" (Bishop Estate Map 658-C), being a portion of R. P. Grant 7874, L. C. Award 11216, Apana 34 to M. Kekauonohi, and is situated at Honaunau, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by Land Use Commission (LUC).

2. **Variance Application/Applicant's Explanation-Request.** The applicant, on behalf of the current lessee and owner (Bishop Estate), submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee. Daniel K. Ward currently leases the property from Bishop Estate (owner).
3. **Variance Application-Site Plan.** The applicant's map or "AS-BUILT" site plan drawing, drawn to scale, was surveyed and prepared by Wes Thomas Associates. The revised site plan, dated June 18, 2001, identifies the location of existing dwelling(s) and other site improvements. The site plan denotes a building or dashed line indicating the limit where buildings or structures may not be built. Portions of a dwelling encroach within the minimum 20 feet side yard and corresponding 14 feet open space requirements.

In addition, the site plan identifies CRM walls, fences, and utility lines along and across boundary lines. Any wall, fence or utility encroachment issues 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 original or approved detailed building construction plans to construct the "2-Story House" denoted on the site plan or established on the property prior to 1967 were not submitted with the variance application.

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5. Agency Comments and Requirements.

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated June 5, 2001 stating:

"TMK(s) (3) 8-4-004:016"

"This is to certify that Daniel K. Ward (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 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 comment:

Please refer to the attached Building Division comments dated December 3, 2001.

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

The attached DPW memorandum dated December 3, 2001 includes the following comments and statements:

"Approval of the application shall be conditioned on the comments as noted below.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures- 5 ft. side, 5 ft. rear

Others: There is no surveyor's report present to support Mr. Klaus D. Conventz's claims. AS-BUILT MAP is too small to read.(sic)

6. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department (Kona Office) on September 24, 2001 and November 26, 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 original location of the "laborer's quarters" and extent of building additions to the laborer's quarters and "farm dwellings" established on the property after 1958 were not known until a modern survey or revised "As-Built Map" dated June 18, 2001 was submitted with the variance application. This site plan identifies building locations and augments real property tax records of the original building improvements established on the property in the 1950s. According to the information provided by the applicant, the current lessee (owner) would like to address the recent 1981 building improvements to a farm dwelling and further encroachments into one of the property's side yards.

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 (lessee) 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 lessee (owner). Alternatives available to the applicant or lessee (owner) to address and correct the existing building encroachments include the following actions:

1. Remove the existing or newer building additions or encroachments that encroach into the affected side 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.

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3. Consolidate Lot 195-A 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 Lot 195-A (Bishop Estate-leased lot) with adjoining lots and resubdivide pursuant to Chapter 23, Subdivisions, was not addressed or considered by the applicant or current lessee (owner).

The applicant, on behalf of the current lessee, is addressing the dwelling's original location and recent building additions (encroachments) that were built and established on the subject property on or about 1981 and prior to any further refinancing by the lessee or any changes to property tenure. No evidence has been found to show indifference or premeditation by the current applicant and lessee (Daniel K. Ward) to deliberately create or intentionally exceed the building's original building location.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant (lessee) 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 the lessee (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 additions were constructed under a series of building permit issued by the DPW-Building Division during the 1950s and 1981. It appears that building inspections of the premises, during building construction and throughout the life of these building permit, did not disclose any building encroachment issues or setback irregularities. It appears that the applicant (lessee) and owner were not aware of the property's building history or extent of the encroachment issues until the survey of the property was performed. The current lessee or (owner) is trying to establish the dwelling's legal location on the property and resolve recent building encroachment problems or building setback issues.

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It appears that original and further encroachments into the affected side yard were not known until a recent map was drawn of the property. The existing encroachments into the side yard 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 the late 1950s. The dwelling's location will not depreciate or change the character of the surrounding neighborhood and surrounding land patterns. Inspection of the property during the life of the building permit issued in 1958 and 1981 by the DPW-Building Division or other agencies did not discover any building encroachment problem(s) or disclose any irregular building or unusual building setback problems or building encroachment issues. Therefore, it is felt that the dwelling's "AS-BUILT" location and recent building additions to the original dwelling 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 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, (Lessee-Daniel K. Ward) or owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant, (Lessee-Daniel K. Ward) or 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.

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3. Portions of an existing farm dwelling encroach into one of Lot 195-A's side yards. The approval of this variance acknowledges the dwelling's original location and permits recent building improvements to remain on the property, "AS BUILT", according to the variance application's revised site plan dated June 18, 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 variance application's revised site plan dated June 18, 2001. Building permits issued to the subject TMK property shall be "finalized" 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 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 Office - Kona
Planning Dept. - Kona