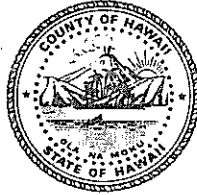


Harry Kim
Mayor



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

May 1, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1280 WH (VAR 02-004)

Applicant: KLAUS D. CONVENTZ
Owners: RICHARD ZENK, ET AL.
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 6-4-017:083, Lot 10

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions stated herein. Variance Permit No. 1280 allows portions of the greenhouse located within a front yard to remain on the property, "AS BUILT", according to applicant's site plan dated January 18, 2002. Portions of the greenhouse encroach a maximum 1.44 feet into one of the Lot 10's (corner lot) minimum thirty (30) feet front yards. The variance is from one of the property's minimum 30 feet front yards pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

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BACKGROUND AND FINDINGS

1. **Location and Zoning.** The subject property, Lot 10 containing 1.169 acres, is a portion of Puukapu Homesteads, Second Series, and situated at South Kohala, Hawaii.

The subject TMK property is zoned Agricultural (A-1a) and designated Agriculture "A" by the State Land Use Commission.

2. **Application.** The applicant submitted the variance application form, supplemental information, tax clearance, and \$250.00 filing fee check on January 24, 2002.
3. **Site Plan.** The applicant's map or site plan drawing of Lot 10, drawn to scale and dated January 18, 2002 was surveyed and prepared by Engineers Surveyors Hawaii, Inc. The site plan denotes and identifies the distance between the existing house and greenhouse and boundary lines. The greenhouse wall is 28.56 feet from the affected front boundary line in lieu of the minimum 30.00 feet front yard required by the Zoning Code.

Note: The variance request does not address existing shed straddling a side boundary line or common boundary line between Lot 10 and Lot 8 or other encroachment issues. The "shed" will be demolished and removed by the applicant and current owners. (Refer to variance conditions listed below).

Furthermore, the site plan does not identify the location of the existing cesspool or Individual Wastewater System (IWS).

4. **Building Permit(s).** The applicant is aware that many DPW building permits and associated electrical and plumbing permits issued to the previous owners will resolved with the respective agencies and closed. (Refer to DPW comments to the variance application and variance conditions listed below).

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5. **Agency Comments and Requirements WH (VAR 02-004).**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated January 23, 2002 states in part the following:

"TMK(s): (3) 6-4-017-083"

"This is to certify that Bankers Trust Company (owner of record) has paid their Real Property Taxes due the County of Hawaii up to and including June 30, 2002."

- b. The State Department of Health (DOH) memorandum dated February 13, 2002, states:

"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 February 26, 2002, states:

"We have reviewed the subject application and offer the following comment:

Please refer to the attached Building Division comments dated February 19, 2002 (sic)

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

The attached DPW memorandum dated February 19, 2002 states in part:

"Our comments on the subject application are as follows:
We oppose the approval of the application for the following reasons noted below.

The Bldg. #025144, 871364, 896137, 916129, 926565, 935053, 975715, Elec. #E975671, EH970116, & Plum. #M025139 permit for the subject dwelling was never finalized.

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The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear”

6. **Notice to Surrounding Owners.** The applicant submitted proof of mailing a first notice on January 25, 2002 and February 15, 2002. It appears that the applicant mailed the first and second notice(s) on January 24, 2002 and February 15, 2002, respectively.
7. **Comments from Surrounding Property Owners or Public.** No oral or written comments or objection letters were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

In consideration of the applicant's submittals and findings above, it appears that small areas of the greenhouse intrude 1.44 feet into one of Lot 10's minimum 30 feet front yards. The 28.56 feet front yard does not meet the minimum yard requirements pursuant to Chapter 25, the Zoning Code. These greenhouse encroachments were inadvertently constructed by the previous owner(s) or builders on or about 1997. The applicant's site plan map submittal identifies or denotes the location of the house, greenhouse, and shed. The "house" and bulk of the "greenhouse" comply with the minimum yard requirements of the Zoning Code. The "shed" will be demolished by the current owners.

It appears that the building encroachment problems were discovered after a "bank" sale of the subject TMK property to the current owners. The applicant, on behalf of the current owner(s), submitted a recent survey map dated January 18, 2002 that identifies the location of the "house", "greenhouse", "shed", and other site improvements. This site plan denotes distances between portions of the greenhouse and affected front boundary line. Portions of the "greenhouse" was constructed into minimum 30 feet front yard. It appears the previous owner(s) and builders were unaware and ignored the building setback problems and encroachment issues. No evidence has been found to show indifference or premeditation by the previous owner(s) or builder to deliberately create or intentionally allow the building encroachment problems to occur.

It appears that the existing greenhouse improvements were constructed and included in a series of building permits and construction permits issued to DPW to the previous owners to develop the subject TMK property. It appears that building inspections of the premises during building construction throughout the life of the building permits did not disclose any building encroachments or building setback issues. The property was sold "as is" to the current owners.

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Therefore, considering the applicant's submittals, findings, and existing circumstances at this time, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant and current owners of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the current and best use 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 current owner(s) or applicant to address and correct the existing building encroachments include the following actions:

1. Remove the existing small greenhouse and attendant greenhouse eaves that encroach into that respective front yard to comply with the minimum 30 feet front yard requirement of the Zoning Code.
2. Redesign and relocate the existing greenhouse to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose removal the small 1.44 feet of greenhouse building encroachment or relocation of the greenhouse to comply with the Zoning Code's minimum yards would seem unreasonably harsh and uneconomical at this time.

No evidence has been found to show indifference or premeditation by the applicant or past owners to deliberately build or intentionally allow the building encroachment problems to be created. The applicant submitted the variance application to address and resolve the building encroachments issues within one of Lot 10's 2-front yards.

The Planning Department acknowledges there may be other design or building alternatives available to the applicants 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 or current owners when a more reasonable alternative is available by the granting of the subject variance request.

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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 greenhouse improvements were constructed under a valid building permit issued on or about 1997 by the County. It appears that the building inspections of the premises, during building construction, and throughout the life of the building permits did not disclose any encroachments into the affected yards or any other building irregularities. The active building permits issued by the DPW-Building Division to construct the house, greenhouse, and other site improvements on the subject TMK property are still "opened" by the DPW and will be addressed by the applicant and current owners together with other associated electrical and mechanical permits issued. The applicant, on behalf of the current owners are trying address the status of the building permits issued to the subject TMK property and resolve building encroachment problems that were disclosed after a modern survey of Lot 10 or subject TMK property to confirm boundary corners and locate existing building improvements was performed and a map of Lot 10 or the TMK property showing and identifying the existing building improvements, "AS BUILT" was prepared for consideration during the sale of the property.

The circumstances to allow and permit the existing building and dwelling encroachments to be built within that affected front yard are unique.

It appears that the commencement of building activity and the greenhouse building encroachments built into or within that affected yard(s) were not perceptible and not physically and visually obtrusive from adjacent TMK property(s) or the rights-of-way on or about 1997. It appears the greenhouse encroachments do not depreciate or detract from the character of the surrounding neighborhood and the existing and surrounding land patterns. It appears the existing encroachment(s) within the affected front yards was an owner or builder's mistake or a misinterpretation of the minimum building yards or boundary line(s). To date, inspections of the TMK property corresponding to the "active" building, electrical, and mechanical permits have not revealed any other encroachment issues and/or disclosed any further Zoning Code problems. Therefore, it is felt that the existing greenhouse encroachments within one of Lot 10's front yards will not detract from the character of the immediate neighborhood or other surrounding property within the subdivision.

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The subject variance application was acknowledged by letter dated February 11, 2002. The applicant's agent agreed to extend the variance decision date to no later than May 3, 2002. 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.

VARIANCE DECISION AND CONDITIONS

The variance request is approved subject to the following conditions:

1. The applicant/owner(s), 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 greenhouse building located on Lot 10 or the subject TMK property encroach 1.44 feet into a minimum 30 feet front yard required by Chapter 25, the Zoning Code. The approval of this variance allows portions of the greenhouse building, "AS BUILT" within the affected front yard to remain on Lot 10 or subject TMK property pursuant to the variance site plan map dated January 18, 2002.
4. The applicant will address and close all active building permits and related construction building permits issued by the DPW to the TMK property. The following outstanding building and related construction permits: "#025144, 871364, 896137, 916129, 926565, 935053, 975715, Elec. #E975671, EH970116, & Plum. #M025139", shall be addressed by the applicant/current owner(s) and closed and/or finalized by the DPW-Building Division prior to any further changes in title or sale of subject TMK property.

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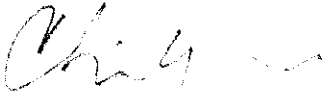
The applicant shall demolish and remove the existing "shed" building straddling a common "south" boundary line, between Lot 10 and Lot 8, on or before July 31, 2002.

Portions of the existing "crm wall" encroach into the Hauhoa Street right-of-way (Lot 21) and have been identified on the site plan dated January 18, 2002. These "crm wall" encroachments shall be addressed by the applicant or current owner(s). The "crm wall" encroachments within the right-of-way or street intersection shall be removed or relocated entirely within Lot 10 or subject TMK property. The "crm wall" height and wall improvements on and along the boundary lines of Lot 10 or the subject TMK property shall comply with Zoning Code requirements and meet minimum DPW requirements.

5. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to Lot 10 or the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
6. Future building additions or improvements and permitted uses on Lot 10 or the subject TMK property 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 - Hilo
Planning Dept. - Kona