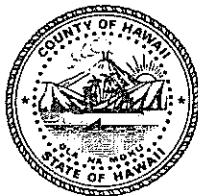


Harry Kim
Mayor



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

July 25, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1296 WH (VAR 02-008)

Applicant: KLAUS D. CONVENTZ
Owners: JOHN MCCLURE, ET AL.
Request: Variance from Minimum Open
Space Requirements,
Pursuant to Chapter 25, Zoning

Tax Map Key: 7-3-011:029

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1296 allows portions of the dwelling's eave to remain, "AS BUILT", with a minimum 3.36 side yard open space according to variance application's site plan dated December 21, 2001. The variance request is from the Zoning Code, Chapter 25, Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot A-1 containing 6632 square feet, is within the Kona Highlands Subdivision, Section "A", and situated at Kalaoa, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC). The property's land area is below the minimum 5 acre lot size area required for the A-5a zone designation and is therefore deemed "non-conforming".

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Variance Application. The applicant submitted the variance application, attachments, and filing fee on February 13, 2002.

2. **Variance Application-Site Plan.** The applicant's site plan drawing, drawn to scale and dated December 21, 2001, denotes the dwelling and roof eave location, "AS BUILT".

Note: The variance request does not address the location of walls straddling common boundary lines or any other issues related to property use. Any existing perimeter walls, fences, and landscape materials straddling TMK boundary lines or any boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-008):**

- a. The State Department of Health (DOH) memorandum dated March 4, 2002, states:

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

- b. The Department of Public Works (DPW)-Building Division dated March 1, 2002, states in part:

"We oppose the approval of the application for the reasons noted below: The Plumbing #M905871 permit for the subject dwelling was never finalized."

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on February 15, 2002 and February 26, 2002 by the applicant

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during the sale of the subject property. The applicant, on behalf of the current owners, is trying to resolve building encroachment issues created by the previous owner(s) or builder. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT". The site plan identifies the building encroachments within the property's minimum yards required by the County Zoning Code. The applicant and current owners became aware of building encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the current or previous owner(s) to deliberately create or intentionally allow the building encroachment problems to occur. It appears the existing dwelling improvements were constructed under valid building permit(s) and construction permits issued by the County. 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 encroachment issues or building setback irregularities.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation and resubdivision to modify property lines and adjust minimum yards.

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)/uses and boundary/property lines.

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It appears that existing building encroachments into the affected side yard or minimum side yard open space area are not physically and visually obtrusive from adjacent property(s) or the existing 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. Therefore, it is felt that the existing dwelling encroachments within the side yard open spaces will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 22, 2002 and additional time to consider agency comments was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than July 31, 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.

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(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.

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3. Portions of the dwelling's roof eaves will not meet Chapter 25, the Zoning Code's minimum side yard open space requirements. The approval of this variance allows the dwelling improvements identified on the variance application's site plan dated December 21, 2001, to remain, "AS BUILT", on the subject TMK property.
4. The applicant or current owner shall contact the DPW to address the outstanding Plumbing Permit (#M905871) issues. The plumbing permit shall be "finaled or closed by the DPW prior to the sale of the property or any further changes in the property 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.

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