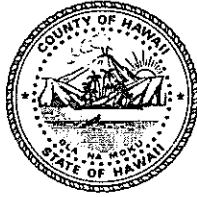


Harry Kim
Mayor



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 29, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1297 WH (VAR 02-009)

Applicant: KLAUS D. CONVENTZ
Owners: JOHN B. FREITAS, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 6-2-010:050, Lot 40

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. _____ allows portions of a 2-story dwelling to remain, "AS BUILT", with a minimum 9.3 feet side yard in lieu of the minimum 10.0 feet side yard required, according to a recent survey and map dated March 14, 2001. The variance request is from the property's minimum 10 feet side yard requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 40 containing 15,250 square feet, is located within the South Kohala View Estates Subdivision, being a portion of R.P. Grant 2237, L.C. Award 8518-B, Apana 1 to James Young Kanehoa, and situated at Ouli, South Kohala, Hawaii.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on February 20, 2002. A copy of the variance application signed by the owners was submitted to the Kona Planning Department on February 25, 2002.

The applicant's site plan drawing, drawn to scale and dated March 14, 2001, denotes the dwelling and roof eave location, "AS BUILT".

Note: The variance request does not address the location of fences and 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 02-009):**
 - 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 9, 2002, states in part:

"We have reviewed the subject application and have no comments."
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 19, 2002 and February 26, 2002 by the applicant
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.

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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. Remove the building encroachments or redesigning and 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.

To require or impose partial removal of the dwelling encroachments and modifying the attendant roof eave(s) to meet the Zoning Code minimum yard requirements would seem unreasonably harsh and uneconomical at this time.

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 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 affected side yard 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:

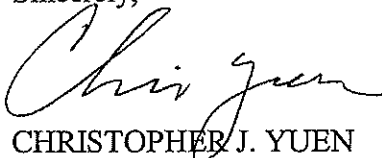
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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.
3. Portions of the 2-story dwelling will not meet Chapter 25, the Zoning Code's minimum side yard requirements. The approval of this variance allows the dwelling improvements identified on the variance application's site plan map dated March 14, 2001, to remain, "AS BUILT", on the subject TMK property.

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

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 - Kona
Planning Dept. - Kona