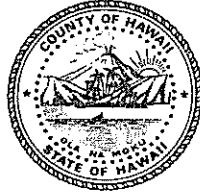


Harry Kim
Mayor



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

August 15 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1302(VAR 02-022)

Applicant: KLAUS D. CONVENTZ
Owner: MARY V. NOGLE-ESTATE
**Request: Variance from Minimum Yards,
Chapter 25, Zoning**
Tax Map Key: 7-7-015:037, Lot 89

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1302 allows portions of a dwelling to remain, "AS BUILT", with a minimum 7.6 feet to 7.8 feet side yard and minimum 13.8 feet to 13.9 feet rear yard lieu of the minimum 8.0 feet side yard and minimum 15 feet rear yard requirements, according to the variance application's site plan or survey map dated and signed on April 16, 2002. The variance request is from Lot 89's minimum yards, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (A) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 89 containing 7500 square feet, is within Kona Seaview Estates, Increment 2, File Plan 970, being a portion of L. C. Award 7228, and situated at Holualoa 4th, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the Land Use Commission (LUC). The subject property is located within the Special Management Area (SMA).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on May 2, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and certified by a surveyor on April 16, 2002. The survey map by KKM Surveys shows the dwelling position, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 89", pursuant to an actual survey dated April 9, 2002.

Note: The variance request does not address the location of the CRM Wall, Chain Link Fence, and other site improvements straddling common boundary lines or any other issues related to property use. These existing perimeter walls and site improvements straddling common boundary lines or any other boundary encroachments must be addressed and resolved by the applicant or between affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-022):**

- a. The State Department of Health (DOH) memorandum dated May 21, 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) memorandum dated May 22, 2002, states in part:

"We have reviewed the subject application and have no comments."

3. **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 April 23, 2002 and May 16, 2002 by the applicant

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4. **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 escrow or sale of the subject property. The applicant, on behalf of the owners, is trying to resolve building encroachment issues created by previous owner(s) or builders. The variance application's site plan map was prepared by a surveyor and shows the dwelling positions and other site improvements, "AS BUILT", on Lot 89. This site plan shows that portions of the dwelling were constructed beyond the lot's building envelope into the minimum side yard and rear yard required by the Hawaii County Zoning Code. The applicant and current owners became aware of the encroachment issues after the survey map was prepared and presented during escrow. No evidence has been found to show indifference or premeditation by the current owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling improvements were constructed under valid building permits and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling improvements 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.

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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)/uses and boundary/property lines.

It appears that existing building encroachments into the affected side yard and rear 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 these building encroachments within the minimum side and rear yards will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated May 7, 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 August 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 a dwelling will not meet Chapter 25, the Zoning Code's minimum yard requirements. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan or survey map dated and signed April 16, 2002, to remain, "AS BUILT", on Lot 89 or the subject TMK property.
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 YUEN
Planning Director

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