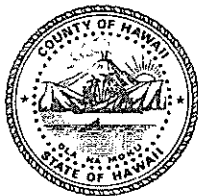


Harry Kim
Mayor



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

September 11, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1309 WH (VAR 02-031)

Applicant: KLAUS D. CONVENTZ
Owner: SUSAN MILLER
**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**
Tax Map Key: 7-7-017:036, Lot 3

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1309 allows portions of a dwelling's stairwell to remain with a minimum 2.3 feet yard, "AS BUILT" and the stairwell eave to remain with a 0.3 feet front yard open space, "AS BUILT", according the variance site plan map dated and signed on May 8, 2002. The variance request is from Lot 3's minimum 15 feet front yard and minimum 10 feet front yard open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a), respectively.

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BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 3 containing 7529 square feet, is within White Sands Beach Subdivision, Unit 1, File Plan 1101, and situated at Laalao 2nd, North Kona, Hawaii.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on May 20, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and certified by a surveyor on May 8, 2002. The survey map by KKM Surveys shows dwelling positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 3", pursuant to an actual survey dated May 1, 2002.

Note: The variance request does not address the location of the "Dry Stack Rock Walls" or other site improvements straddling common boundary lines or any other issues related to property use. Those walls or 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 02-031):**

- a. The State Department of Health (DOH) memorandum dated June 5, 2002, states:

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

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- b. The Department of Public Works (DPW) memorandum dated June 10, 2002, states in part:

"Please refer to the attached Building Division comments dated April 18, 2002."

The attached DPW-Building Division memorandum dated April 18, 2002 states in part:

"We oppose the approval of the application for the reasons noted below.

The Mechanical MK03121 permit for the subject dwelling was never finalized.

Others: Under normal conditions the walls would have to be protected, however, since Keelikolani Drive is located in the front, building code allows centerline of Keelikolani Drive to be considered as an adjacent property line. Please verify distance to centerline of road."

- c. The County of Hawaii Fire Department memorandum dated June 19, 2002 states:

"We have no comments to offer at this time regarding the above-referenced application."

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 May 20, 2002 and June 3, 2002 by the applicant.
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.

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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 owner, 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 position and other site improvements, "AS BUILT", on Lot 3. This site plan shows that portions of a dwelling was constructed beyond the lot's building envelope into the Lot 3's front yard and attendant front yard open space required by the Hawaii County Zoning Code. The applicant or current owner 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 owner 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 with portions of the adjoining Right-of-Way (Princess Keelikolani Drive) and resubdivision of the resultant lot to modify property lines-right-of-way and adjustment of 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 front yard and attendant front yard open space requirements are not physically noticeable or 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 affected front yard and front yard open space will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated May 29, 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 September 15, 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 will not meet Chapter 25, the Zoning Code's minimum front yard and attendant front yard open space requirements. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan map dated and signed May 8, 2002, to remain, "AS BUILT", on Lot 3 or the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division and close the following mechanical permit: Mechanical MK03121 together with other concerns regarding building walls prior to any change in title or sale of the subject TMK property.
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 3 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 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