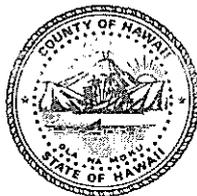


Harry Kim
Mayor



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

October 2, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1317 WH (VAR 02-033)

Applicant: KLAUS D. CONVENTZ
Owners: MILTON S. MICHAELIS, ET AL.
**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**

Tax Map Key: 7-6-010:032, Lot 4-A

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1317 allows portions of the tennis court's perimeter 10 feet high chainlink fence to remain with a minimum 0.00 feet side yard, "AS BUILT", according to the variance application's site plan map or survey map dated May 28, 2002. The variance request is from Lot 4-A's minimum 15 feet side yard and minimum 10 feet side yard open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 5, Section 25-5-56, Minimum yards, (2), Article 4, Division 4, Section 25-4-43, Fences and accessory structures, (a) (c), 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 4-A containing 29,251 square feet, being a portion of R.P. 7819, L.C. Aw. 8559-B, Ap. 8 to Lunalilo and portion of the Partition of Holualoa 1 & 2, Makai Section, R.P. 4475, L.C. Aw. 7713, Ap. 43 to Kamamalu, is situated at Holualoa 1 & 2, North Kona, Hawaii.

The property is zoned Residential and Agricultural Districts (RA-.5) by the County and designated Rural "R" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on May 29, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and certified by a surveyor on May 28, 2002. The survey map by KKM Surveys shows dwelling and pool positions, tennis court position, and other site improvements, "AS BUILT", on "LOT 4-A".

Note: The variance site plan does not show the cesspool location(s) or required wastewater systems. The variance request does not address any existing "on-grade" building or landscaping improvements straddling common boundary lines. Any stonewalls 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 02-033):**

- a. The State Department of Health (DOH) memorandum dated July 8, 2002, states:

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

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- b. The Department of Public Works (DPW) memorandum dated July 9, 2002, states in part:

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

The attached DPW-Building Division memorandum dated July 1, 2002 states in part:

"We have no comments or objections to the 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 29, 2002 and June 27, 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.

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 the chainlink fence height and location within the affected side yard. The variance application's site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", on Lot 4-A. It appears that a portion of the chainlink fence (10 feet high) surrounding the tennis court was constructed into Lot 4-A's minimum side yards and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of the fence 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 and related site 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, tennis court, and other related site improvements did not disclose any building encroachment issues or building setback irregularities.

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ALTERNATIVES

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

1. Reduce the height of the chainlink fence to 8 feet or redesigning or relocating the tennis court and fencing elsewhere on the subject property.
2. Consolidation with portions of the adjoining property and resubdivision of the resultant lot to modify a common boundary line and respective side 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.

It appears that chainlink fence (10 feet) height and encroachment issues caused by the chainlink fence height (10 feet in lieu of the maximum 8 feet height allowed) within the affected side yard and attendant side 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 or fence 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 or chainlink fence encroachments within the affected side yard and side 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 June 19, 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 October 4, 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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

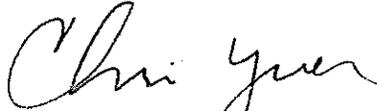
This variance request is approved subject to the following conditions:

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 10 feet high chainlink fence will not meet Chapter 25, the Zoning Code's minimum side yard and attendant side yard open space requirements. The approval of this variance allows the fence height or the chainlink fence encroachments identified on the variance application's site plan map dated and signed May 28, 2002, to remain, "AS BUILT", on Lot 4-A or the subject TMK property.
4. 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 4-A 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.

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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 - Kona
Planning Dept. - Kona