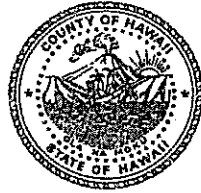


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

October 8, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1319 WH (VAR 02-034)

Applicant: KLAUS D. CONVENTZ
Owners: WAYNE FRAZIOR FAMILY TRUST
**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**
Tax Map Key: 7-5-025:033, Lot 9-C

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1319 allows portions of a dwelling to remain with a minimum 24.7 feet rear yard and minimum 13.6 feet to 14.8 feet side yard and attendant 9.9 feet side yard open space requirements, "AS BUILT", according the variance site plan map dated June 4, 2002. The variance request is from Lot 9-C's minimum 25 feet rear yard and minimum 15 feet side yard and attendant 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, (1) (2), 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 9-C containing 21,820 square feet, is located within Kona Orchard Subdivision, being a portion of R.P. 7819, L.C. Aw. 8559-B, Ap. 8 to William C. Lunalilo, and situated at Puapuaanui, North Kona, Hawaii.

The property is zoned Residential and Agricultural District (RA-.5a) 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 June 10, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 4, 2002. The survey map by Wes Thomas Associates shows the dwelling position, roof eave location, and other site improvements, "AS BUILT", on "LOT 9-C", pursuant to an actual survey done on or between May 16, 2002 and May 21, 2002.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS) or site improvements straddling common boundary lines or walls within the right-of-way. Any 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 02-034):**

- 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:

"Please refer to the attached Building Division comments dated July 1, 2002."

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

"Approval of the application shall be conditioned on the comments as noted below.

The Mechanical #M025532 permit for the subject dwelling was never finalized.

Others: Plumbing Permit #M025532 is change gas line only. Once that permit is finalized we have no objections to variance."

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 June 10, 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 owners, is trying to resolve building encroachment issues created by the 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 9-C. This site plan shows that portions of the dwelling were constructed beyond the lot's building lines or building envelope into the Lot 9-C's rear and 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 encroachment issues after the survey map was prepared and presented during escrow.

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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 with portions of the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of 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 these small building encroachments into the affected rear and side yards and attendant open space requirements are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that the building encroachments have not affected the adjoining property(s) or neighborhood or severely changed or altered the surrounding land patterns. Therefore, it is felt that the small building encroachments within the minimum yards and identified on the variance application's site plan map 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 11, 2002.

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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:

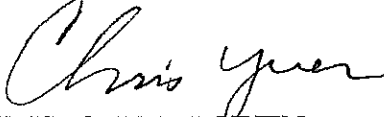
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 dwelling or "1-Story House will not meet Chapter 25, the Zoning Code's minimum rear and side yards and attendant rear and side 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 June 4, 2002, to remain, "AS BUILT", on Lot 9-C or the subject TMK property.
4. The applicant or current owner(s) shall confer, respectively, with the DPW-Building Division and to close the following mechanical permit: Mechanical MK25532 and the DPW-Engineering Division to address or remove the "concrete wall" located within Pa'ai Place right-of-way 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 9-C or the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.

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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