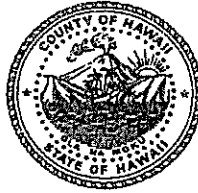


Harry Kim
Mayor



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 10, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1322 WH (VAR 02-038)

Applicant: KLAUS D. CONVENTZ
Owner: JAMES R. MASON
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-7-018:005, 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.1322 allows portions of a dwelling to remain with a minimum 14.0 feet to 14.1 feet rear yard, "AS BUILT", according the variance site plan map dated and signed June 6, 2002. The variance request is from Lot 3's minimum 15 feet rear yard requirement, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(A).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 3 containing approximately 7880 + square feet, is within the White Sands Beach Estates, Unit III, File Plan 1102, and situated at Laaloa 1st, 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 improved property is 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 Kona Planning Department on or about June 13, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 6, 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 done on or about May 31 and June 3, 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 other boundary encroachments must be addressed and resolved by the applicant or between or between the current property owner(s) and the affected agency(s)/ adjoining property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-038):**

- a. The Hawaii County Fire Department (HFD) memorandum dated July 17, 2002 states:

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

- b. The Department of Public Works (DPW) memorandum dated July 22, 2002, states in part:

"We have reviewed the subject application and offer the following comment:

Please refer to the attached Building Division comments dated July 16, 2002.

Any encroachments within the County right-of-way should be removed."

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The attached DPW-Building Division memorandum dated July 16, 2002 states in part:

“We have no comments or objections to the application.”

- c. The State Department of Health (DOH) memorandum dated July 26, 2002, states:

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

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 June 10, 2002 and June 27, 2002 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. However, several telephone calls and the following correspondence or letter(s) were received from the concerned property owners or neighbors (i.e. the dwelling’s past history (rental units), excessive foot and vehicle traffic within the neighborhood, and on-street parking issues):
- a. Letter dated June 21, 2002 from Mark and Nancy Miller.
- b. Fax letter date July 17, 2002 from Marjorie Erway.

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Note: For the record, a request for an ohana dwelling permit by a previous owner(s) of the subject property (Lot 3) **was denied** an ohana permit application (proposed duplex conversion), pursuant to certified letter dated November 30, 1990. Recent inquiries concerning property and other zoning abuses alleging multiple rental units, concerns regarding foot and excessive vehicular traffic, and parking congestion within the neighborhood, etc. are being investigated and monitored by the Hawaii County Planning Department. The applicant and current owner(s) are aware that any non-permitted uses of the single-family dwelling improvements located on the subject property (Lot 3) and other parking issues are being monitored by the Zoning Inspector, Hawaii County Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject property to the current owner. The applicant, on behalf of the current 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 single-family dwelling were constructed "by others" beyond the lot's building lines or building envelope into the Lot 3's rear yard, pursuant to 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 to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original 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 at that time.

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.

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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 existing building encroachments within the rear yard are not physically noticeable or visually obtrusive from adjacent property(s) or the right-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 rear yard 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 and neighborhood concerns was deemed 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 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.

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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 a single-family dwelling located on the subject property will not meet Chapter 25, the Zoning Code's minimum rear yard requirements. The approval of this variance allows the single-family dwelling improvements and encroachments identified on the variance application's site plan map dated and signed on June 6, 2002, to remain, "AS BUILT", on Lot 3 or the subject TMK property.
4. The applicant or current owner(s) shall confer, respectively, with the DPW-Building Division to address any outstanding building issues or close any building permits or construction permits issued to the subject tax map key property and access and driveway location to the subject tax map key property shall be subject to and be approved by the DPW-Engineering Division. Current access to the property and permitted driveway access location via the right-of-way (Princess Keelikolani Drive) and the parking within the right-of-way fronting or near the property shall meet DPW or County requirements commensurate with zoning and property uses.
5. The portions of a perimeter rock wall extending into the right-of-way or surrounding a "Utility Pole" identified on the variance site plan map shall be removed on or before December 31, 2002.
6. 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.
7. Future building improvements and permitted uses on the subject tax map key property are 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
Mark and Nancy Miller
Ms. Marjorie Erway
OD 90-392 File
Jeff Darrow, Zoning Inspector