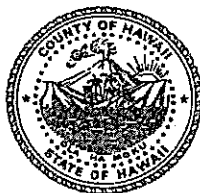


Harry Kim
Mayor



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. 1320 WH (VAR 02-039)

Applicant: KLAUS D. CONVENTZ
Owners: F. MICHAEL SINGER, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code

Tax Map Key: 7-7-019:030, Lot 30

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1320 allows portions of a dwelling (House) with a minimum 19.00 feet front yard and minimum 9.89 feet to 9.80 feet side yard, "AS BUILT", to remain on the property according the variance site plan map dated June 11, 2002. The variance request is from Lot 30's minimum 20 feet front yard and minimum 10 feet side yard, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 30 containing 11,232 square feet, is within the Kuakini Heights Subdivision, Unit II, and situated at Laaloa 2nd, North Kona, Hawaii.

The property is zoned Single-Family Residential District (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC).

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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 June 18, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 11, 2002. The survey map by The Independent Hawaii Surveyors shows the dwelling (house) position, roof eave location, and other site improvements, "AS BUILT", on "LOT 30", pursuant to an actual field survey done on or between June 11, 2002.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS) or disclose the driveway improvements and any other site improvements near or along common boundary lines or within the right-of-way. Any landscape or 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 02-039):**
 - a. The County of Hawaii Fire Department 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."

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

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

The Building #02588 permit for the subject dwelling has no status of inspection.

Others: Approval will be granted upon final inspection of Permit #02588.”

- 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. The existing systems need to be identified on the application map.”

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 17, 2002 and July 12, 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 and states, “the owner’s contractor obviously committed an honest staking error”. The variance application’s site plan map was prepared by a surveyor and shows the dwelling position, “AS BUILT”, on Lot 30. This site plan shows that portions of the dwelling were constructed beyond the lot’s building lines or building envelope into Lot 30’s front yard and a side yard, 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 front and affected side yard are not physically noticeable or visually obtrusive from right-of-way (Ainanani Street), adjacent property-Lot 29, and other surrounding property. It appears that these small 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 these building encroachments within the minimum yards 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 July 8, 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 building improvements will not meet Chapter 25, the Zoning Code's minimum front yard and side yard requirements. The approval of this variance allows the dwelling or the building improvements and encroachments identified on the variance application's site plan map dated June 11, 2002, to remain, "AS BUILT", on Lot 30 or the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division and complete Permit #02588 requirements. Permit #02588 shall be "finaled" or closed by the DPW 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 30 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

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