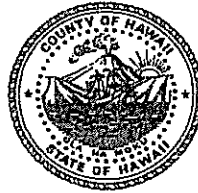


Harry Kim
Mayor



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. 1324 WH (VAR 02-045)

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

Tax Map Key: 7-9-010:064

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1324 recognizes the 1-Story Building envelope and building position, "AS BUILT", according to the variance site plan map dated June 18, 2001. The variance recognizes that portions of the original building were constructed or established on the property before 1967 and will allow building improvements within the building envelope and building encroachments denoted on the variance site plan map, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 10, Section 25-5-106, Minimum yards, (1), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of 9777 square feet, is Grant 761 to J. Cavanagh, and situated at Honuaino 4th, North Kona, Hawaii.

It appears that the property was zoned Neighborhood Commercial District (CN-10) by the County in 1967 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 July 8, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 18, 2001. The survey map by The Wes Thomas Associates shows the 1-Story Building improvements-position, roof eave location, and other site improvements, "AS BUILT", pursuant to an actual survey done between May 22, 2001 and June 4, 2001.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS). The status of access from the right-of-way, easement location(s), building or wall encroachments along or straddling common boundary lines, landscaping encroachment or drainage issues, and placement of existing utility improvements and utility lines upon the property must be resolved by the applicant-current owners or between affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-045):**
 - a. The State Department of Health (DOH) memorandum dated August 1, 2002, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."
 - b. The Department of Public Works (DPW) memorandum dated August 9, 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 29, 2002.

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

The attached DPW-Building Division memorandum dated July 29, 2002 states in part:

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

Others: Additional information is required: Code Search on existing structure, along with supporting documentation (drawings).”

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 July 8, 2002 and July 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 status of the building position and any encroachment issues were identified during escrow or recent sale of the subject property. The applicant, on behalf of the current owners, is trying to address building record and any encroachment issues and states, “The new owner proposed to legalize the improvements.” The variance application’s site plan map was prepared by a surveyor and shows that portions of the building, “AS BUILT”, circa June 18, 2001. The applicant states and building permit records purport that portions of the building were constructed and built on the property prior to the adoption of the Zoning Code in 1967 and may be “non-conforming”. According to the building lines established in 1967, it appears that portions of the building legally constructed before 1967 would encroach within the rear yard and side yard would be subject to Plan Approval. It appears that previously approved or detailed building construction plans to construct the original building prior to 1967 are not available and other and building permit records are vague. The applicant and current owners are attempting to acknowledge the building’s present position and any encroachment issues. Any necessary permits or building construction permits for interior or building additions will be subject to the Zoning Code, Building Code, etc. or any law pertaining to building construction and occupancy. According to the recent DPW review and comments, no outstanding 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. Removing the "non-conforming" building encroachments or redesigning or relocating the building 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 the building encroachments into the yards are not physically noticeable or visually obtrusive from right-of-way (Mamalahoa Highway), and adjoining property(s). It appears that the building position and any encroachments within the yards have not affected the adjoining property(s) or neighborhood or severely changed or altered the surrounding land patterns during the last 45 + years. Therefore, it is felt that the encroachments within the minimum yards constructed on the property beyond the building lines, pursuant to the Zoning Code, which are identified on the variance application's site plan map or recent survey 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 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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

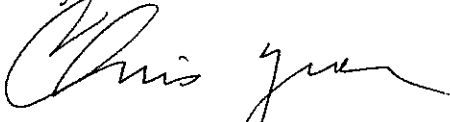
This variance request is approved subject to the following conditions:

1. The applicant/owner(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 building improvements will not meet Chapter 25, the Zoning Code's minimum yards and attendant clear space requirements. The approval of this variance allows the building improvements located on and within the property or the variance application's site plan map dated June 18, 2001, to remain, "AS BUILT", on the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division and secure any permits necessary to allow occupancy. Any building or site improvements encroaching beyond common boundary lines shared with adjoining property(s) or within the existing rights-of-way or private easements are subject to agency requirements and should be addressed between legal property owners. Any building or construction permits issued to the subject property shall be "finalized" or closed prior to any further change in title or sale of the 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 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 Plan Approval 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

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