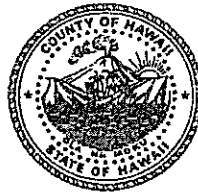


Harry Kim
Mayor



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. 1325 WH (VAR 02-046)
Applicant: KLAUS D. CONVENTZ
Owners: BRENT WILLIAMS, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-7-017:029, Lot 10

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1325 allows portions of the single-family-guest-house and open deck improvements, "AS BUILT", to remain on the subject property with a minimum 6.63 feet to 6.79 feet side yard and attendant 4.53 feet to 4.69 feet side yard open space and portions of an open deck with a minimum 7.83 feet rear yard open space in lieu of the minimum 10 feet side yard and attendant 5 feet side yard open space and 10 feet rear yard open space requirements, according to the variance application's site plan map dated June 14, 2002. The variance request is from Lot 10's minimum yard and open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(A)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

025792118

OCT 11 2002

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
October 10, 2002

BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 7,516 square feet, is Lot 10 of White Sands Beach Subdivision, and situated at Kapalaalaea, 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 located within the Special Management Area (SMA).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on July 9, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 14, 2002. The survey map by The Independent Hawaii Surveyors shows the building ("House") improvements, deck, pool, and roof eave location, and other site improvements, "AS BUILT", on "LOT 10", pursuant to an actual survey done on June 14, 2002.

Note: The variance application and site plan map does not address or denote the location of a cesspool or individual wastewater system (IWS). Any wall or landscape improvements straddling common boundary lines 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 02-046):**

- a. The State Department of Health (DOH) memorandum dated August 1, 2002, states:

"We have no objections to the proposed variance application if the property is serviced by municipal sewer. However, if the property is serviced by its own individual wastewater system (IWS), the existing IWS needs to be identified on the application map."

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
October 10, 2002

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

“We have reviewed the subject application and have no comments.”

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 July 9, 2002 and July 27, 2002 by the applicant.
5. **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 the building encroachment issues created in the early 1970s. The variance application's site plan map was prepared by a surveyor and shows the building and other site improvements, "AS BUILT", on Lot 10. The variance site plan map show small portions of the dwelling (HOUSE) and the open deck were constructed beyond the lot's building lines or building envelope into one of Lot 10's side yards and rear yard open space, pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of the building 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 owners or previous builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the building improvements were constructed under valid building and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling and garage improvements did not disclose any building encroachment issues or building setback irregularities.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
October 10, 2002

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 and open deck to fit within the correct building envelope and attendant open space requirements 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 yards 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 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 24, 2002 and additional time to consider agency comments and site plan 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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
October 10, 2002

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

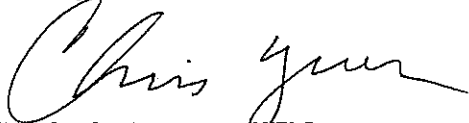
This variance request is approved subject to the following conditions:

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 located on the subject property will not meet Chapter 25, the Zoning Code's minimum side yard and rear yard open space requirements. The approval of this variance allows portions of a single-family and guest house and open deck building encroachments identified on the variance application's site plan map dated June 14, 2002, to remain, "AS BUILT", on Lot 10 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 10 or the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
October 10, 2002

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

A handwritten signature in cursive script that reads "Chris Yuen".

CHRISTOPHER J. YUEN
Planning Director

WRY:cps
P:\WP60\WRY\FORMLETT\VARAPPZCTMK77017029.BC

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