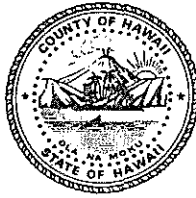


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

November 6, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1334 WH (VAR 02-057)

Applicant: KLAUS D. CONVENTZ
Owner: FRANK D. MCGUAIRK, SR.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-011:064, Lot A-11

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1334 allows the dwelling encroachments to remain on the property, "AS BUILT", with a minimum 14.15 feet to 14.47 feet rear yard according to variance application's site plan map dated and signed on July 22, 2002. The variance request is from the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot A-11 containing 8000 square feet, is within the Kona Highlands Subdivision, Section "A", and situated at Kalaoa 1st and 2nd, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC). The property's land area is below the minimum 5-acre lot size area required for the A-5a zone designation and is therefore deemed "non-conforming".

NOV 8 2002

02844

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
November 6, 2002

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about July 30, 2002. The applicant's site plan map drawing, drawn to scale and dated and signed on July 22, 2002. The site plan identifies the dwelling encroachments within the minimum 15 feet rear yard, "AS BUILT".

Note: The dwelling's wastewater system is not located or identified on the site plan map. The variance request does not address the location of rockwalls straddling common boundary lines or any other issues related to property use. Any existing perimeter walls, gates, fences, and landscape materials straddling TMK boundary lines or other boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-057):**

- a. The State Department of Health (DOH) memorandum dated August 27, 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 30, 2002, states in part:

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

Please refer to the attached Building Division comments dated August 27, 2002."

The attached DPW-Building Division memorandum dated August 27, 2002 states in part:

"We oppose the approval of the application for the reasons noted below:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
November 6, 2002

The Electrical #EK04492 permit for the subject dwelling has no status of inspections.”

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 31, 2002 and August 23, 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 after the dwelling was constructed in the early 1980s. The applicant, on behalf of the current owner, is trying to resolve building encroachment issues. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT". The site plan identifies the dwelling or building encroachments within the property's minimum rear yard pursuant to the Hawaii County Zoning Code. The applicant and current owner became aware of building encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the current or builder(s) to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the existing dwelling improvements were constructed under valid building permit(s) and construction permits issued by the County. It appears that the building inspections of the premises, during building construction and throughout the life of the building permit(s) 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. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
November 6, 2002

2. Consolidation and resubdivision to modify property lines and adjust 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 minimum rear yard are not physically and visually obtrusive from adjacent property(s) or the existing 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 the existing dwelling encroachments within the rear yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 20, 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 November 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.
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

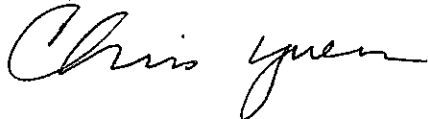
Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
November 6, 2002

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 will not meet Chapter 25, the Zoning Code's minimum rear yard requirement. The approval of this variance allows the dwelling encroachments identified on the variance application's site plan map that was signed and dated July 22, 2002, to remain, "AS BUILT", on the subject TMK property (Lot A-11).
4. The applicant or current owner shall contact the DPW to address the outstanding Electrical Permit (#EK04492) issues. The electrical permit shall be closed or "finalized" by the DPW prior to the sale of the property or any further changes in the property title.
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 (Lot A-11), 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 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

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

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