

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

March 12, 2003

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT NO. 1350 WH (VAR 02-073)
Applicant: KLAUS D. CONVENTZ
Owner: GAYNELLE A. E. TROTTER
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-3-033:065, Lot 65

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1350 allows portions of a dwelling and garage improvements, "AS BUILT", to remain on Lot 65 with a minimum 17.8 feet front yard and minimum 9.7 feet to 9.8 feet side yards in lieu of the minimum 20 feet front yard and 10 feet side yards, respectively, according to variance application's site plan map dated and signed on November 1, 2002. The variance request is from Lot 26's minimum yards, pursuant to the Hawaii County Zoning Code, Chapter 25, 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 65 containing 11,838 square feet, is within the Kona Palisades Subdivision, Unit II, File Plan 1087, and situated at Kalaoa 5th, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Urban

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"U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about November 6, 2002. The applicant's variance application site plan or As-Built Survey Map drawing is drawn to scale, dated and was signed on November 1, 2002 by a surveyor. The map by KKM SURVEYS denotes the building envelope and shows the "Dwelling" and attached "Garage" positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 65", pursuant to an actual survey done on or about October 29-30, 2002.

Note: The variance request does not address the "Propane Tank" location, location of cesspool or other individual wastewater system (IWS), and other site improvements straddling property lines shared with adjoining lots, and wall and fence improvements located within the right-of-way. Any other boundary encroachments must be addressed and resolved by the applicant or between the current property owner(s) and adjoining property owner(s) or affected agencies.

3. **Agency Comments and Requirements-WH (VAR 02-073):**

- a. The Department of Public Works (DPW) memorandum dated November 26, 2002, states in part:

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

Please refer to the attached Building Division comments dated November 25, 2002."

The attached DPW-Building Division memorandum dated November 25, 2002 states in part:

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

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The Electrical #EK04472 permit for the subject dwelling has no status of inspections.

Others: Approval will be given when electrical permit is finalized.”

- b. The State Department of Health (DOH) memorandum dated March 10, 2003, 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 November 7, 2002 and November 23, 2002 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject TMK property. The applicant, on behalf of the current owner, is trying to resolve the dwelling and garage encroachment issues. The variance application’s site plan map was prepared by a surveyor and shows the dwelling and garage positions and other site improvements, “AS BUILT”, on Lot 65. This site plan shows that portions of a dwelling and attached garage were constructed beyond the lot’s building lines or building envelope into Lot 65’s minimum front and side yards pursuant to the Hawaii County Zoning Code. The applicant and current owner 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 builder or current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling and attached garage improvements were constructed under valid building permit(s) and associated electrical and plumbing 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 Mr.

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encroachment issues or building setback irregularities at that time. The applicant, on behalf of the owner(s), will address all open construction and building permits issued to the subject TMK property and other encroachment issues disclosed on the variance site plan map.

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 garage to fit within the correct building envelope prescribed by the Zoning Code. The propane tank location and the wall/fence improvements will be addressed by the current owner or between the owner(s) and the DPW-Engineering Division (Kona).
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 dwelling and garage encroachments constructed on or about 1980 within the affected front and respective side yards are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these 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 affected yards and minimum open yard spaces 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 October 28, 2002 and additional time for agency review and review of past permits issued to the property 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 March 15, 2003.

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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, 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 a single-family dwelling and attached garage improvements located on the subject property will not meet Chapter 25, the Zoning Code's minimum yard requirements. The approval of this variance allows the dwelling and garage encroachments identified on the variance application's site plan map, "AS BUILT", to remain on Lot 65 or subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division (Kona) to address any outstanding building issues or close all building and construction permits issued to the subject tax map key property. The status of the "propane tank" shall be demolished or relocated to comply with county building codes before December 31, 2003. The status of the open permits and location of the propane tank shall be addressed by the applicant or current property owners.
5. The applicant shall confer with the DPW-Engineering Division (Kona) to address the status of the wall or fence encroachments within the affected right-of-way. The wall and fence encroachments within Wainana Place shall be addressed by the applicant or current property owners prior to any further change in title or sale

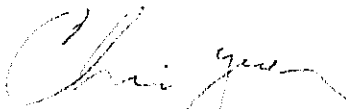
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of the property.

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 65 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.

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 Department - Kona