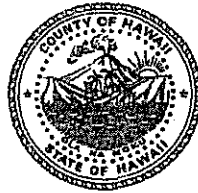


Harry Kim
Mayor



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. 1351 WH (VAR 02-074)
Applicant: KLAUS D. CONVENTZ
Owner: JOHN R. WORTH
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-5-029:053, Lot 108

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1351 allows portions of a dwelling and carport improvements, "AS BUILT", to remain on Lot 108, with a minimum 6.5 feet side yard and 1.9 feet side yard open space in lieu of the minimum 8.0 feet side and attendant 4.0 feet side yard open space from the respective side property line according to a variance site plan map dated and signed December 2, 2002. The variance request is from Lot 108's minimum yards pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 108 containing 9630 square feet, is within Kona Heights Subdivision, Increment II, File Plan 1077, and situated at Hienaloli 5th and 6th, North Kona, Hawaii.

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The property is zoned Agricultural (A-5a) by the County and designated Urban "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 December 9, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and signed December 2, 2002. The survey map by KKM SURVEYS shows dwelling-carport positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 108", pursuant to an actual survey done on November 19, 2002.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS) or site improvements straddling common boundary lines or CRM walls straddling common property lines and the rights-of-way. Any other boundary or CRM wall encroachments must be addressed and solved by the applicant or between or between the current property owner(s) and the affected agency(s)/ adjoining property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-074):**

- a. The Department of Public Works (DPW) memorandum dated January 14, 2003, states in part:

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

Buildings

1. Please refer to the attached Building Division comments dated January 10, 2003.

Roadways

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

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The attached DPW-Building Division memorandum dated January 10, 2003, states in part:

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

The projections do not meet setback requirements and should be corrected.

Others: shall conform to Section 504, of the 1991 Uniform Building Code."

- b. The State Department of Health (DOH) memorandum dated November 20, 2002, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

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 December 9, 2002 and January 8, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections were received from surrounding property owners or public.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were recently discovered after a survey of existing property was prepared for escrow purposes. The applicant is trying to resolve building encroachment issues created by previous contractor or builders. The variance application's site plan map was prepared by a surveyor and shows the dwelling positions and other site improvements, "AS BUILT", on Lot 108. County records indicate that portions of both single-family dwellings were constructed "by others" beyond the lot's building lines or building envelope into the Lot 108's minimum yards, pursuant to the Hawaii County Zoning Code. The applicant and owner became aware of the encroachment issues created by the contractor or previous owner(s). No evidence has been found to show indifference or premeditation by the original contractor or current owner to deliberately create or intentionally allow the building Mr.

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encroachment problems to occur. It appears that that all 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 at that time.

ALTERNATIVES

Alternatives available to the applicant or property owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or redesigning or relocating the respective dwelling improvements 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.

Due to the unusual topography of Lot 108 and relationship to adjoining lots, the existing dwelling encroachments within the respective minimum yards of Lot 108 are not physically noticeable or visually obtrusive from adjacent property(s) or the rights-of-way. It appears that specific 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 these building encroachments within the 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 December 31, 2002 and additional time to consider agency comments and neighborhood concerns 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 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 carport improvements and encroachments identified on the variance application's site plan map dated and signed on December 2, 2002, to remain, "AS BUILT", on Lot 108 or the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division-Kona to address any outstanding building permits or associated electrical or mechanical construction permits issued to the subject tax map key property.
5. The applicant or current owner(s) shall confer with the DPW-Engineering Division-Kona regarding the CRM wall encroachments located within the rights-of-way (Aloha Kona Drive and Nele Place). The CRM wall encroachments within these rights-of-way shall be removed by the current applicant/owner(s) or comply with the requirements or conditions stipulated by the DPW-Engineering Division-Kona. These encroachments shall be addressed prior to any further

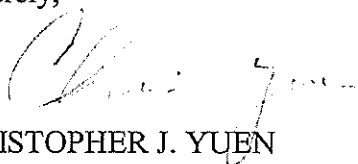
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change in title or sale of the property.

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 108 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 Dept. - Kona