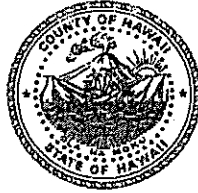


Harry Kim
Mayor



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. 1352 WH (VAR 02-075)
Applicant: KLAUS D. CONVENTZ
Owner: ALICE LOWERY TRUST
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 6-4-012:077, Lot 11-A

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1352 allows portions of a dwelling (1-Story House), "AS BUILT", to remain on Lot 11-A with a minimum 14.7 side yard and minimum 11.1 feet side yard open space in lieu of the minimum 20.0 feet side yard and attendant minimum 14.0 feet side yard open space requirements, respectively, according to variance application's site plan map dated December 11, 2002. The variance request is from Lot 11-A'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, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 11-A containing 1.024 acres, being a portion of Grant 8990 to Annie F. Namauu, and situated at Puukapu, South Kohala, Hawaii.

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The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" 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 20, 2002. The applicant's variance application site plan or map drawing is drawn to scale and dated December 11, 2002. The map by Wes Thomas Associates denotes the building envelope and shows the "1-Story House" position, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 11-A", pursuant to an actual survey done on or about December 11, 2002.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS), and other fence and site improvements straddling property lines or common boundary lines shared with adjoining lots, encroachment issues on surrounding property, and fence improvements 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 02-075):**

- 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:

Roadways

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

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

"We have no comments or objections to the application."

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- 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 need 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 December 23, 2002 and January 8, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No comments or written objections were received from the surrounding property owners or public.

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 building encroachment issues. The variance application's site plan map was prepared by a surveyor and shows the dwelling position and other site improvements, "AS BUILT", on Lot 11-A. This recent site plan map shows that portions of a dwelling (1-Story House) were constructed beyond the lot's building lines or building envelope into one of Lot 11-A's minimum side yard and attendant side yard open space requirements, pursuant to the Hawaii County Zoning Code.

The applicant or current owner became aware of the dwelling 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 owner to deliberately create or intentionally allow the building encroachment problems to occur. The dwelling improvements were constructed under valid building permit(s) 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 other site improvements did not disclose any building encroachment issues or building setback irregularities at that time. The fence and gate located within Wailani Place (right-of-way) identified on the site plan map will be removed or relocated elsewhere on the subject TMK property.

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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 existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 11-B) 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 encroachments were constructed prior to 1990. The building or dwelling encroachment within the affected side and attendant side yard open space are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that the 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 side yard and minimum side yard open space disclosed by 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 or address the status of other improvements within the right-of-way and the agencies 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.

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

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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 "1-Story House" or dwelling located on the subject property will not meet Chapter 25, the Zoning Code's minimum side yard requirements. The approval of this variance allows the dwelling improvements and dwelling encroachments identified on the variance application's site plan map, "AS BUILT", to remain on Lot 11-A or subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division (Kona) to address any outstanding or open building permits issued to the subject tax map key property. The "fence" and "gate" improvements located within the right-of-way shall be demolished or relocated elsewhere on the subject property before June 1, 2003 and confirmed by the applicant.
5. 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.

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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

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xc: Real Property Tax - Kona
Planning Department - Kona