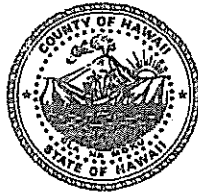


Harry Kim
Mayor



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

June 9, 2003

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT NO. 1366 WH (VAR 03-007)
Applicant: KLAUS D. CONVENTZ
Owner: ALETTA BRENDIN-BELL
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 5-5-001:126, Lot 1

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1366 allows portions of a 2-story farm dwelling and garage building to remain on subject TMK property (Lot 1), AS-BUILT, with a minimum 17.8 feet front yard and minimum 19.8 feet and 18.6 feet side yards, respectively, in lieu of the minimum 20.0 feet side yards required, according to variance application's site plan map dated January 5, 2003. The variance request is from subject TMK property's minimum yards pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 1 containing 5.000 acres, being a portion of Lot 24 of Kaauhuhu Homesteads, is situated at Hawi, North Kohala, Hawaii.

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The property is zoned Agricultural (A-3a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). Lot 1, consisting of 5.000 acres and Lot 2, consisting of 4.490 acres, was created by SUB 5808 on September 25, 1989. Therefore, for the record, ohana dwelling permit (OHD 82-45) issued in 1983 to the original 9.490 acre TMK parcel became moot or nullified.

Subsequent to the above, a farm dwelling application to construct a second farm dwelling on the subject TMK property, Lot 1, was approved on or about September 30, 1997. A building permit (BP 985087) to construct the second farm dwelling (2-Story Dwelling) on Lot 1 was approved in 1998.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about January 27, 2003. The applicant's variance application site plan map is drawn to scale, dated January 5, 2003 and prepared/signed by a surveyor. This site plan map denotes the building positions and other site improvements, AS BUILT, on "LOT 1". Portions of a detached garage building originally constructed in 1983 under or pursuant to BP 830581(?) and 2-story farm dwelling constructed circa 1998 pursuant to BP 985087 encroach into the respective 20 feet side yards according to the variance application's sit plan map.

Note: The variance request does not address the "SATALITE DISH" (sic) location, "LPG TANK" location, and other wire fence improvements straddling property lines shared with adjoining lots. The location of these improvements or 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 03-007):**

- a. The State Department of Health (DOH) memorandum dated March 7, 2003, states:

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

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- b. The Department of Public Works (DPW) memorandum dated March 17, 2003, states in part:

“We have reviewed the subject application and have no comments dated March 12, 2003.

Building

1. Please refer to the attached Building Division comments dated March 12, 2003.”

The attached DPW-Building Division memorandum dated March 12, 2003 states in part:

“We have no comments or objections to the application.”

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 January 28, 2003 and February 26, 2003 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 issues were recently discovered. The applicant, on behalf of the current owner, is trying to resolve the building encroachment issues and use(s). The variance application's site plan map was prepared by a surveyor and shows building positions and other site improvements, AS BUILT, on Lot 1. The variance site plan map, dated January 5, 2003 show portions of a “TWO STORY DWELLING WITH GARAGE UNDER” and “ONE STORY DWELLING”-the original detached garage Building (?) were constructed into Lot 1's respective side yards pursuant to the Hawaii County Zoning Code. The applicant and current owner became aware of the building encroachment issues and other Zoning Code issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the applicant or current owner to deliberately create or intentionally allow the building

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encroachment problems. The final subdivision plat map shows the original dwelling and detached garage improvements were built and established on Lot 1 according to the final subdivision plat map (Revised: March 30, 1989-SUB 5808). It appears that county inspections by the agencies during construction of the building improvements and review of the subdivision application did not disclose any encroachment issues or building setback irregularities. The applicant, on behalf of the current owner is addressing the encroachment issues and other building issues. The applicant, on behalf of the current owner, will obtain necessary "After-the-Fact" building and construction permits to comply with the Zoning and Building Codes. Any non-permitted kitchen improvements installed within the original detached garage building or other building modifications will be removed and the remaining garage building (garage/bedroom) improvements will be made part of the dwelling constructed circa 1983-89 and attached by a covered walkway. The applicant will confer with the DPW-Building Division (Kona) regarding the status of the original "Garage" building permit and secure any "After-the-Fact" construction permits for the garage or dwelling addition pursuant to the variance conditions listed below.

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 status of the Satellite Dish and LPG Tank building positions will be addressed or relocated pursuant to any DPW requirements or permits.
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 garage encroachments constructed on or about 1983-89 and dwelling encroachments constructed circa 1998 within the respective side yards are not physically

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noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these 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 affected side 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 February 14, 2003. Additional time to consider past permits and building 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 June 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 character and to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

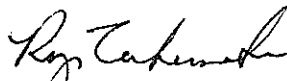
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 ohana dwelling and garage improvements attached to the original 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 garage encroachments identified on the variance application's site plan map, AS BUILT, to remain on Lot 1 or subject TMK property.

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4. The applicant or current owner(s) shall confer with the DPW-Building Division (Kona) to address and remove non-permitted kitchen improvements located within the original detached garage building or "ONE STORY DWELLING" identified on the variance site plan map. The resultant building or garage/bedroom improvements shall be connected to the original dwelling. The location or building positions of the Satellite Dish and "LPG TANK" denoted on the variance site plan map shall comply with all county codes. The DPW building permit or necessary construction permits for the garage/bedroom addition to the "TWO STORY FRAME DWELLING" shall be closed or "finaled" by the DPW on or before June 30, 2004 or prior to any change in title or sale of the property.
5. The applicant shall submit a written status report to confirm the removal of kitchen improvements and that the remaining buildings and uses comply with the Hawaii County Zoning Code. The written status report will be submitted to the Planning Department on or before June 30, 2004.
6. 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
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