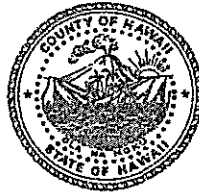


Harry Kim
Mayor



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

July 10, 2003

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT NO. 1375 WH (VAR 03-021)
Applicant: KLAUS D. CONVENTZ
Owners: TERRY E. RUSS TRUST, ET AL.
Request: Variance from Minimum Yards, and
Minimum Open Space Requirements
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 7-7-003:064, Lot 8

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1375 allows portion(s) of both dwelling(s) to remain on subject TMK property (Lot 8), "AS BUILT", according to the variance site plan map dated February 13, 2003. The variance allows portions of "easterly" dwelling/eave to remain with minimum 14.2 feet side yard and 7.3 feet side yard open space and the "westerly" dwelling/eave to remain with minimum 19.9 feet to 20.2 feet rear yard and attendant minimum 13.7 feet to 14.2 feet rear yard open space. The porte-cochere position and porte-cochere encroachments, "AS BUILT", within the privately owned right-of-way (Pelenike Drive or TMK: (3) 7-7-003:063, Lot 18), will be addressed by the applicant and/or among the owners of the right-of-way. The variance request is from Lot 8's minimum yards and attendant minimum 4 feet side yard open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 5, Section 25-5-56, Minimum yards, (a) (1) (2), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a), respectively.

BACKGROUND AND FINDINGS

037980 [Signature]

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1. **Location.** The subject TMK property, Lots 8 consisting of 29,888 square feet, is a portion of Kalamauka Subdivision being a portion of R.P. 7289, L.C. Aw. 7228 to Loe, and situated at Holualoa 4th, North Kona, Hawaii.

The property is zoned Residential and Agricultural District (RA-.5) by the County and designated Rural "R" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, on or about March 7, 2003. The variance application's site plan or survey map was prepared KKM SURVEYS and signed on February 13, 2003. The survey map identifies the "Dwelling" positions and other improvements on "LOT 8". Portions of both "Dwelling" encroach into the respective yards and associated open space requirements of the Zoning Code. According to the applicant, both dwellings were constructed in 1969. The 33 + year old building encroachments were discovered after a survey map was prepared during escrow to sell the subject property (Lot 8) and building improvements constructed in between 1974 and 1984.

Note: The variance site plan map does not identify any individual wastewater system (IWS) or cesspool location(s). The variance application does not address or approve of any porte-cochere encroachments within the privately owned right-of-way (Pelenike Drive) fronting the subject TMK property. The porte-cochere position, "AS-BUILT" and encroachment issues within the privately owned right-of-way shall be addressed by the applicant and/or resolved between the owners of the affected TMK property(s).

3. **Agency Comments and Requirements-WH (VAR 03-021):**

- a. The Department of Public Works (DPW) memorandum dated May 27, 2003, states:

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

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Building

1. Please refer to the attached Building Division comments dated May 22, 2003.”

The attached DPW memorandum dated May 22, 2003 attached to the DPW memorandum dated May 27, 2003 states in part:

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

The Plumbing M005935, Electrical EK05640, permit (sic) for the subject dwelling was (sic) never finalized.”

b. The State Department of Health (DOH) memorandum dated June 16, 2003 states:

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

3. **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 March 7, 2003 and May 16, 2003 by the applicant.
4. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment issues were discovered during or after escrow or sale of the subject property. The applicant, on behalf of the current owner(s), is trying to resolve the building encroachment issues constructed circa 1974-1984. The variance application’s site plan map was prepared by a surveyor and shows the both dwelling positions, “AS BUILT”, on the Mr.

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subject TMK property. This site plan shows portions of each dwelling and associated "Eave" improvements were constructed beyond the Lot 8's building line limits or building envelope into the respective yards and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. The applicant or current owner(s) became aware of the encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the past owners/builders or current owners to deliberately create or intentionally allow the building encroachment problems to occur.

It appears the dwelling improvements and other site improvements were constructed or established on the property on or about 1974-1984. These 19 to 29 + year old building improvements do not detract from the character of the dwelling and appearance of this older residential neighborhood. The dwelling encroachment issues and other building issues were discovered during escrow to sell the property.

ALTERNATIVES

Alternatives available to the applicant or current owners include the following actions:

1. Remove dwelling or building encroachments within the affected yards.
2. Redesign or relocate dwelling improvements to fit within the correct building envelope prescribed by the Zoning Code, and/or other similar design alternatives, etc.
3. Confer with adjoining property owners and privately owned right-of-way to consolidate the subject TMK property with the adjoining TMK property and resubdivide the resultant consolidated lot to modify the property geometry and/or change the metes and bounds descriptions in accordance with the minimum side yard and open space requirements of the Zoning Code.

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 encroachments within the affected yards and attendant open space

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requirements of the subject property were not noticeable at the time of construction. The neighborhood character and dwelling improvements on the subject TMK property were established or constructed on the property between 19 or 30 years ago. These dwelling encroachments do not depreciate or detract from the character of the area or adjoining agricultural/residential improvements or surrounding land pattern within the immediate area.

Based on the foregoing findings, staff discussions with the applicant and surrounding property owner, other DOH concerns and property circumstances, the decision to approve the applicant's variance request with conditions, 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, it is felt 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:

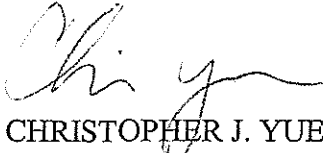
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owner(s), their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. The "Dwellings" or building improvements on the subject tax map key property (Lot 8) will not meet Chapter 25, the Zoning Code's minimum side yard and the attendant minimum side yard open space requirements. The approval of this variance allows portions of two (2) "Dwelling" or the building encroachments identified on the variance application's site plan map dated February 13, 2003 to remain, "AS-BUILT", on the subject TMK property (Lot 8).
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and

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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

WRY:mad
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xc: Real Property Tax-Hilo
Planning Dept. – Kona