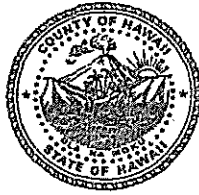


Harry Kim
Mayor



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 3, 2003

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1374 WH (VAR 03-028)
Applicant: KLAUS D. CONVENTZ
Owners: DERRICK H. FUKUMOTO, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-3-011:017, Lot A-93

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1374 allows portions of the dwelling and attached garage improvements to remain on the property (Lot A-93), "AS-BUILT", with a minimum 11.5 feet to 13.7 feet front yard and 7.4 feet to 7.8 feet side yard in lieu of the minimum 15.0 feet front yard and 8.0 feet side yard, respectively, according to the variance application's site plan map dated and signed on April 17, 2003. The variance request is from the 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), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot A-93 containing 9,261 square feet, is within Kona Highlands Section-A, File Plan 688, and situated at Kalaoa 1st and 2nd, 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 April 28, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated and signed on April 17, 2003. The variance application's site plan or survey map by KKM Surveys identifies and denotes the building envelope, dwelling/deck, attached garage, roof eave positions, and other site improvements on "LOT A-93".

Note: The variance request does not address the cesspool or other individual wastewater system (IWS) location, the location of CRM walls or retaining walls on the property, and landscaping improvements or CRM wall encroachments within the right-of-way, and any other boundary issues along or straddling common boundary lines shared with adjoining lots. 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 03-028):**

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

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

Building

1. Please refer to the attached Building Division comments dated May 22, 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 May 22, 2003 states in part:

“We have reviewed your variance application, dated May 13, 2003. It does not violate Building Code requirements for location on property.”

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

“The Heath 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 April 28, 2003 and May 16, 2003 by the applicant.
5. **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 problems were disclosed by a survey map dated April 17, 2003. The applicant, on behalf of the owners, filed the variance request and application to address or 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 A-93". This site plan shows that portions of a dwelling and garage were constructed beyond the lot's building lines or building envelope into Lot A-93's minimum yards pursuant to the Hawaii County Zoning Code. The applicant and current owners became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the past owner(s)/builders or current owners to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original building improvements were constructed 23 + years ago under valid building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises in 1980 by the agencies during construction of the building

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improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 CRM walls within the right-of-way will be addressed between the applicant/owners and the DPW-Engineering Division (Kona).
2. Consolidation with portions of the adjoining property(s) (R-O-W and Lot A-94 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 attached garage encroachments constructed on or about 1980 within the front and affected side yards are not physically 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 surrounding land pattern. Therefore, it is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision. Note: The encroachment issues within the County right-of-way (Eluna Street) will be addressed by the applicant or current owners (Refer to variance permit conditions).

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

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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:

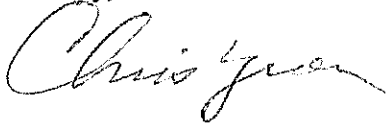
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 "Dwelling" and attached "Garage" located on "LOT A-93" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated and signed on April 17, 2003. The approval of this variance allows the dwelling and garage building improvements including roof eaves within "LOT A-93" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT A-93".
4. The CRM wall encroachments within Eluna Street or County right-of-way should be removed according to the DPW-memorandum dated May 27, 2003. The applicant or current owner(s) shall confer with the DPW-Engineering Division (Kona) to address the wall encroachment issues within the County right-of-way. The wall encroachment issues within the County right-of-way shall be addressed or removed by the applicant/current owner(s) prior to any change in ownership or transfer of title of the property.
5. 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 A-93" or the subject TMK property.

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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
Ms. Deborah Au