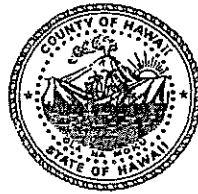


Harry Kim
Mayor



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

August 27, 2003

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1383 WH (VAR 03-031)

Applicant: KLAUS D. CONVENTZ
Owner: KATHERINE L. STEPHENS
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 8-8-014:034, Lot 10

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1383 allows portions of the dwelling ("2-Story House") and water tank encroachments to remain on the property (Lot 10), "AS-BUILT", with a minimum 13.5 feet to minimum 21.7 feet front yard in lieu of the minimum 30.0 feet front yard required, minimum 11.3 feet to minimum 14.1 feet side yard in lieu of the minimum 20.0 feet side yard required, and attendant minimum 13.5 feet to minimum 18.4 feet front yard open space and minimum 10.1 feet to minimum 11.1 feet to 14.1 feet side yard open space in lieu of the minimum 24.0 feet front yard open space and 14.0 minimum side yard open space required, according to the variance site plan map dated April 10, 2003. The variance request is from the subject TMK property's (Lot 10) minimum yards pursuant to the Hawaii County Code, Chapter 25, Zoning, 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 10 of Block 25 containing 1.000 acre, is within the Milolii Beach Lots Subdivision (File Plan 789), Portion of Grant 3723 to J. M. Monsarrat, and situated at Papa 2nd, South Kona, Hawaii.

1341 4/22
AUG 28 2003

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
August 27, 2003

The property is zoned Agricultural (A-5a) 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 May 7, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated April 10, 2003. The variance application's site plan or survey map by Wes Thomas Associates identifies and denotes the building envelope, dwelling (2-Story House), water tank, and other site improvements on "LOT 10".

Note: The variance request does not address the cesspool or other individual wastewater system (IWS) location, retaining stonewall, property access, 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 03-031):**
 - a. The Department of Public Works (DPW) memorandum dated June 19, 2003, states in part:

"We have reviewed the subject application and have no comments or objections to the application."
 - b. The State Department of Health (DOH) memorandum dated June 23, 2003, 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 May 7, 2003 and June 16, 2003 by the applicant.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
August 27, 2003

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. A copy of a letter or objection (?) letter addressed or sent to the applicant was received for the record. Most of the letter's text and signature are illegible. No TMK number, return address or telephone number was provided.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated April 10, 2003. The applicant, on behalf of the owner, filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling, water tank, and other site improvements, "AS BUILT", on "LOT 10". Portions of a 2-story dwelling and water tank were constructed beyond the lot's building lines or building envelope into Lot 10's minimum yards pursuant to the Hawaii County Zoning Code. The current owner 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 owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 10 were constructed approximately 15 years ago according to County building permit(s) records. It appears that building inspections of the premises in 1988 by the agencies during construction of the building 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 water tank to fit within the correct building envelope prescribed by the Zoning Code. Access to the Lot 10 via a driveway located on the adjoining property via Lehua Avenue will be addressed between the applicant/owners and/or resolved by the DPW-Engineering Division (Kona).
2. Consolidation with portions of the adjoining property (Lot 11) and the privately owned R-O-W and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
August 27, 2003

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 water tank encroachments constructed on or about 1988 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.

The subject variance application was acknowledged by letter dated June 12, 2003. Additional time to consider current property access to Lot 10 and "Dirt" driveway identified on adjoining lot (Lot 11) 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 August 29, 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,

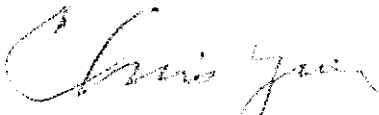
Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
August 27, 2003

employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of a "2-Story House" and "Water Tank" located on "LOT 10" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated April 10, 2003. The approval of this variance allows the dwelling and water tank improvements including roof eaves within "LOT 10" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 10".
4. The applicant or current owner shall confer with the DPW-Engineering Division (Kona) to address access to Lot 10 via the "Dirt Driveway" located on adjoining property (Lot 11). Legal access to Lot 10 shall be addressed by the applicant/current owner 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 10" or the subject TMK property.
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

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
August 27, 2003

xc: Real Property Tax - Kona
Planning Department - Kona