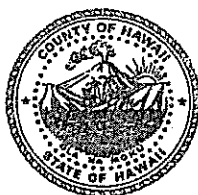


Harry Kim
Mayor



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

October 24, 2003

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1392 WH (VAR 03-047)

Applicant: KLAUS D. CONVENTZ
Owners: SHIOZUMI HAWAII, LTD.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 6-9-003:013, Lot 74

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1392 allows portions of a dwelling to remain on the tax map key (TMK) property (Lot 74), "AS-BUILT", with a minimum 8.2 feet side yard in lieu of the minimum 10.0 feet side yard, according to the variance site plan map dated July 21, 2003. The variance request is from the subject TMK property's minimum yards pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 74 containing 18,211 square feet, is located within Puako Beach Lots (HTS PLAT 414-B), being the Whole of Grant 12474 to Charles G. McGillivray and Lois J. McGillivray, and situated at Lalamilo, South Kohala, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the State of Hawaii-Land Use Commission (LUC). The property is located within an area designated Special Management Area (SMA) by the County of Hawaii.

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about August 1, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated July 21, 2003. The variance application's site plan or survey map by Wes Thomas Associates identifies and denotes the building envelope, dwelling (1-Story House) position and other site improvements on "LOT 74".

Note: The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for any dwelling improvements located on "LOT 74". The location of any CRM perimeter wall/planter and landscaping within the County right-of-way shall be addressed and resolved by the applicant/current owner.

3. **Agency Comments and Requirements-WH (VAR 03-047):**

- a. The Department of Public Works (DPW) memorandum dated August 25, 2003, states in part:

"We have reviewed the subject application and our comments are as follows:

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. The applicant shall remove any encroachments or obstructions within the County right-of-way."

The attached DPW (Kona) memorandum dated August 14, 2003 states in part:

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

Others: The building permit No. 975598 is (sic) never finalized."

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- b. The State Department of Health (DOH) memorandum dated August 26, 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 August 2, 2003 and August 14, 2003, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated July 21, 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 and other site improvements, “AS BUILT”, upon “LOT 74”. Portions of a dwelling were constructed beyond the denoted building lines or building envelope into Lot 74’s minimum yards pursuant to the Hawaii County Zoning Code. The current owner or applicant 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 74 were constructed between 1975 and 1988 according to County building permit(s) records. It appears that building inspections of the premises by the respective agencies during the construction of the building improvements did not disclose any building encroachment issues or building setback irregularities at that time. The location of any CRM wall or planter improvements encroaching into the public right-of-way shall and status of the any open building and/or outstanding construction permits issued to the TMK property shall be resolved by the applicant/current owner (Refer to Variance Permit Conditions).

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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 75) 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 encroachments constructed on or about 1975 or between 1975 and 1988 within the affected 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 August 8, 2003. Additional time to consider agency comments 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 October 24, 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.

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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" located on "LOT 74" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated July 21, 2003. The approval of this variance allows those dwelling improvements including roof eaves within "LOT 74" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 74".
4. The portion of a "CRM planter" located within the Puako Beach Drive (County-Right-of-Way) identified by the site plan map dated July 21, 2003 and status of BP No. 975598 shall be addressed and resolved by the applicant/current owner and DPW-Kona prior to any change in ownership or transfer of title of the property.

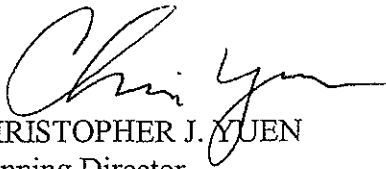
BP No. 975598 shall be "finaled" or closed by the DPW-Building Division prior to any change in ownership or sale of the property.
5. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property (LOT 74), subject to provisions of the Zoning Code or State Law which may change from time to time.

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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