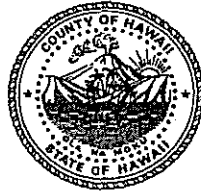


Harry Kim
Mayor



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

March 23, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1414 WH (VAR 03-049)

Applicant: KLAUS D. CONVENTZ
Owners: LLOYD YAMADA, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-015:010, Lot 52

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1414 allows a portions of a dwelling and ohana dwelling on Lot 52, to remain, AS-BUILT", with a minimum 13.4 feet front yard and minimum 7.9 feet side yard and attendant minimum 3.7 feet side yard open space, respectively, in lieu of the property's minimum 15.0 feet front yard and 8.0 feet side yard and attendant 4.0 feet side yard open space requirements, according to the variance site plan or survey map dated and signed on August 15, 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 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, 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 52 containing 7847 square feet, is located within Kona Wonderview Lots, File Plan 765, and situated at Kalaoa 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). The property's land area is below the minimum 5-acre lot size area required for the A-5a zone designation and is deemed "non-conforming".

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about August 22, 2003. The variance application site plan map drawing is drawn to scale and dated and signed on August 15, 2003 by Kevin McMillen, RPLS. The site plan map denotes the location of the dwelling encroachments and shed encroachments, "AS-BUILT" into the minimum yards and attendant open yard or clear space requirements.

Note: The applicant's background states in part:

"Representative/applicant advised owner to completely remove the shed inside the rear setback."

The dwelling's wastewater system is not located or identified on the site plan map. The variance request does not address location or position of CRM walls straddling common boundary lines, CRM walls within the public right-of-way, and any other issues related to property use. Any perimeter walls and/or landscape materials straddling TMK boundary lines or other boundary encroachments within adjoining property must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 03-049):**
 - a. The Department of Public Works (DPW) memorandum dated October 9, 2003, states in part:

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

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BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

ROADWAYS

1. The applicant shall remove any encroachments or obstructions within the County right-of-way."

Commercial structures-5 ft. side, 5 ft. rear"

The copy of the DPW memorandum dated September 29, 2003, states in part:

"We oppose the approval of the application for the reasons noted below.

The Building #K02383, Electrical #EH56586, #EK01800 and Plumbing #MH33296, MK0151 permit for the subject dwelling has (sic) no status on inspections performed."

- b. The State Department of Health (DOH) memorandum dated October 3, 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 first and second notices were mailed on August 22, 2003 and September 18, 2003 by the applicant.
5. Comments from Surrounding Property Owners or Public. No further written agency comments were received and no objections from the surrounding property owners or the public were received.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were constructed between 1977 and 1994. The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues. The variance application's site plan map was prepared by a surveyor and denotes the location of both dwelling and other site improvements, "AS BUILT" on "LOT 52". The site plan identifies dwelling positions together with other building issues within the property's minimum yards and attendant open yard requirements pursuant to the Hawaii County Zoning Code. The applicant and/or current owners became aware of building encroachment issues after the survey map was prepared for escrow. No evidence has been found to show indifference or premeditation by past or current owner(s) to deliberately create or intentionally allow the dwelling encroachment to be constructed. Both dwellings were constructed under valid building permit(s) and other construction permits issued by the County. It appears that the building inspections of the premises, during building construction and throughout the life of the building permit(s) did not disclose any building encroachment issues or building setback irregularities.

Pursuant to the applicant, the "SHED" identified on the variance site plan map within the rear yard was "completely removed".

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code. The "SHED" building within the rear yard and identified on the variance site plan map was removed.
2. Consolidation of Lot 52 with adjoining lot(s) and resubdivision to modify property lines and adjust 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.

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It appears that the dwelling encroachments into the minimum yards are not physically and visually obtrusive from adjacent property(s) or the right-of-way fronting Lot 52. It appears the 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 the existing dwelling encroachments within the yards identified on the variance application 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 September 12, 2003 and additional time to review all agency comments and address or remove the shed within the rear yard was 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 March 19, 2004.

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 the dwelling improvements located on the subject TMK property or Lot 52 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows both dwellings or dwelling encroachments identified on the variance application's site

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plan map that was signed and dated August 15, 2003, to remain, "AS BUILT", on the subject TMK property (Lot 52).

4. The applicant shall confer with the Department of Public Works (DPW) Engineering Division in Kona regarding removal and relocation of the CRM wall improvements within the public right-of-way (Liloa Drive) along the front boundary line of Lot 52. The wall encroachment issues within the right-of-way shall be resolved prior to transfer of title or sale of the property.

The Building #K02383, Electrical #EH56586, #EK01800 and Plumbing #MH33296, MK0151 permit(s) issued to allow the dwelling improvements or subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to transfer of title or sale of the property.

5. No further variance from provisions of Chapter 25, Zoning to allow expansion of the ohana dwelling located on subject TMK property (Lot 52), shall be granted, subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses shall be 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 Office - Kona
Planning Dept. - Kona
OD 93-242 File-Hilo