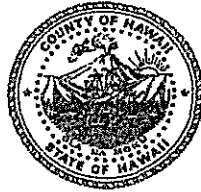


Harry Kim
Mayor



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

January 21, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1402 WH (VAR 03-063)

Applicant: KLAUS D. CONVENTZ
Owner: ROBERT M. MARTINSON
**Request: Variance from Minimum Yards,
Pursuant to Chapter 25, the Zoning Code**
Tax Map Key: 7-7-020:083, Lot 12

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1402 allows portions of a dwelling to remain on the tax map key (TMK) property (Lot 12), "AS-BUILT", with a minimum 9.88 feet side yard and attached wooden staircase and landing with a minimum 2.01 feet to 2.23 feet side yard open space, respectively, in lieu of the minimum 10.0 feet side yard and attendant 5.0 feet side yard open space requirements, respectively, according to the variance site plan or survey map dated and signed on September 24, 2003. The variance request is from the subject TMK's minimum side yard and attendant side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B), 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 12 containing 10,004 square feet, is located within Kainana Subdivision, and situated at Holualoa 3rd, North Kona, Hawaii. The property is zoned Single-Family Residential (RS-10) by the County and designated "Urban" by the State Land Use (SLU) Commission.

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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 September 26, 2003. The applicant's variance application site plan or map drawing is drawn to scale and was dated and signed on September 24, 2003. The variance application's site plan or survey map by Don Mc Intosh Consulting identifies and denotes the building envelope, dwelling (3 Story House) position, "Steps", "Landing", and other site improvements on "LOT 12".

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 12". The location of any perimeter wall improvements within "Kilohana Street" right-of-way (Public Right-of-Way) shall be addressed and resolved by the applicant/current owner.

3. **Agency Comments and Requirements-WH (VAR 03-063):**

- a. The Department of Public Works (DPW) memorandum dated October 20, 2003, states in part:

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

BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division, dated October 16, 2003.)

ROADWAYS

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

The attached DPW (Kona) memorandum dated October 20, 2003 states in part:

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“Per Hawaii County Code, Chapter 5, Building Code (UBC), Section 504 (b), it is permitted to have projection beyond the exterior wall but not extend beyond a point more than 12 inches into areas where as openings are prohibited in Table No. 5-A of this code. Per Hawaii County Code, Chapter 5, Building Code (UBC), Section 1711, combustible projections located where openings are not permitted shall be of one-hour fire resistive or heavy-timber construction, see attached. Section 504 of UBC is required location of property. Section 1711 is requirements based on types of construction. Therefore any permitted projections which are 12 inches into areas where openings are prohibited are required one-hour fire resistive or heavy-timber construction.”

Note: Refer to copy of attachment-“PROJECTIONS Sec. 1711”attached to the DPW memorandum in variance file and variance condition(s) cited below. For the record, the subject variance application is from Chapter 25, Zoning only. The applicant also filed an appeal from DPW-Building Code requirements to the Board of Appeals (BOA NO. 03-01).

- b. The State Department of Health (DOH) memorandum dated November 13, 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 September 26, 2003 and October 16, 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.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated and signed on September 24, 2003. The applicant, on behalf of the owner, filed the variance request and application to address or resolve building and "Steps" encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", upon "LOT 12". A small portion of a dwelling' footprint or living area and Landing/Steps are constructed beyond the denoted building lines or building envelope into one of Lot 12's minimum 2-side yards and attendant side yard open space requirements 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 owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling improvements on Lot 12 were constructed between 2000 and 2001 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 "wall" 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).

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 steps to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 11) 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 subdivision are to assure that

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adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

It appears that small portions of the dwelling and "Steps" constructed on or about 2000 or between 2000 and 2001 within the affected side yard and attendant side yard open space are not physically noticeable or visually obtrusive from adjacent property("LOT 11") 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 October 9, 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 January 23, 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.

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3. Portions of a "3 Story House", "Landing", and "Steps" located on "LOT 12" 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 September 24, 2003. The approval of this variance allows the dwelling and attached "Steps" improvements on "LOT 12" pursuant to the variance application's site plan map dated and signed on September 24, 2003 to remain, AS BUILT, on the subject TMK property or "LOT 12".

The building improvements including the "Landing" and "Steps" on "LOT 12" or subject TMK property shall meet all County Building Code requirements stipulated by the Department of Public Works (DPW)-Building Division prior to any change in ownership or sale of the property.

4. The "Wall" located "0.7" into Kilohana Street (County-Right-of-Way) identified on the site plan map dated and signed on September 24, 2003 shall be addressed and/or removed by the applicant/current owner and DPW-Kona 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 12), subject to provisions of the Zoning Code or State Law which may change from time to time.
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.

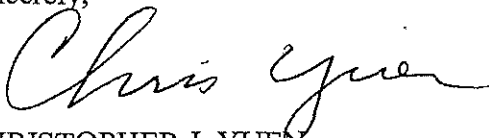
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:pak

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xc: Real Property Tax - Kona
Planning Department -- Kona
Diane A. Noda, Esq., Deputy Corporation Counsel
BOA NO. 03-01 File - Hilo