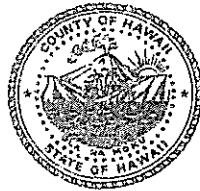


Harry Kim
Mayor



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

June 1, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1450 WH (VAR 03-074)

Applicant: KLAUS D. CONVENTZ
Owners: JOSEPH GOLDSCHREK, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-026:057, Lot 58

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1450 allows portions a variance to allow portions of a dwelling (1-Story) to remain, "AS-BUILT", on the subject TMK property, Lot 58, with a minimum 9.3 feet to 9.5 feet rear yard and attendant minimum 7.6 feet to 8.4 feet rear yard open space, in lieu of the minimum 15.0 feet rear yard and attendant minimum 10.0 feet rear yard open space requirements, respectively, according to the variance site plan dated and signed on October 17, 2003. The variance request is from the subject TMK property's minimum rear yard and attendant rear yard open space requirements 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 58 containing 7763 square feet, is located within Kona Heights Subdivision, Increment 1, File Plan 1075, and situated at Hienaloli 5th, North Kona, Hawaii. 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

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minimum 5-acre lot size area required for the A-5a zone designation and is therefore deemed "non-conforming".

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about October 20, 2003. The variance application site plan map drawing is drawn to scale and was prepared by KKM SURVEYS. This site plan map, dated and signed on October 17, 2003 denotes the location of the building encroachments into the minimum 15 feet rear yard, "AS-BUILT", of "LOT 58". In addition, portions of the dwelling and eave improvements, "AS BUILT", do not meet the attendant minimum 10 feet rear yard open space requirements.

Note: The dwelling's wastewater system is not located or identified on the site plan map. The variance request does not address the location of stonewalls straddling common boundary lines or any other issues related to property use. Any existing perimeter walls and/or landscape materials straddling TMK boundary lines or other boundary encroachments 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 03-074):**

- a. The Department of Public Works (DPW) memorandum dated November 28, 2003, states in part:

"We 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)."

The attached DPW memorandum dated November 28, 2003 states in part:

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

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The minimum setbacks shall be maintained as follows:
Residential structures-3 ft. side, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear

"Others: The Building Permit No. 885482 and Electrical Permit No. K07478 are not finalized."

- b. The State Department of Health (DOH) memorandum dated February 6, 2004 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 October 20, 2003 and November 28, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter was received:
- a. Objection letter from Betsy T. Mori dated November 3, 2003.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the building ("Dwelling") encroachment problems were constructed pursuant to Building Permit No. 07519. 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 the dwelling improvements and other site improvements, "AS BUILT" on "LOT 58". The site plan identifies the dwelling/eave or building encroachments within the property's minimum rear yard and attendant rear yard open side space requirements pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of building encroachment issues after the survey map was prepared or during escrow. No evidence has been found to show indifference or premeditation by the current owners to deliberately create or intentionally allow the building encroachment problems within the rear yard and rear yard open space to occur. It appears that the building improvements were constructed under valid building permit(s) and construction permits issued by the County. It

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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.

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.
2. Consolidation of the subject TMK property (Lot 58) with adjoining lot (Lot 6) 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.

It appears that the building encroachments into the minimum rear yard and attendant rear yard open space requirement are not physically and visually obtrusive from adjoining property(s) or existing roadway. It appears that 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 rear yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated November 20, 2003 and additional time to consider agency comments 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 June 15, 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

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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/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owners, 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" and "Eave" improvements on "LOT 58" will not meet Chapter 25, the Zoning Code's minimum rear yard and attendant rear yard open space requirements. The approval of this variance allows the dwelling encroachments identified on the variance application's site plan map dated and signed on October 17, 2003, to remain, "AS BUILT", on the subject TMK property (LOT 58).
4. The applicant shall contact the DPW-Building Division in Kona and close or "final" outstanding building permit-BP No. 885482 and electrical building permit-K07478 prior to any change in title or sale of the subject TMK 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 58), subject to provisions of the 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.

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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

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xc: Real Property Tax Office-Kona
Planning Dept.- Kona
Ms. Betsy T. Mori