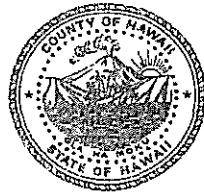


Harry Kim
Mayor



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. 1449 WH (VAR 03-075)

Applicant: KLAUS D. CONVENTZ
Owner: STEPHEN P. POLESHUK
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-8-018:002, Lot 2

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1449 allows portions of a dwelling or "2 Story Structure" to remain, "AS-BUILT", on the subject TMK property, Lot 2, with a minimum 7.1 feet to 7.9 feet front yard and attendant minimum 5.3 feet front yard open space, in lieu of the minimum 20.0 feet front yard and attendant minimum 14.0 feet front yard open space requirements, respectively, according to the variance site plan dated and signed on October 12, 2003. The variance request is from the subject TMK's minimum front yard and attendant front 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) (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 2 consisting of approximately 0.57-acre +/-, is located within Kuakini House Lots, and situated at Kahaluu, North Hawaii. The property's address is 78-6728 Walua Road.

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The subject TMK property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC).

County records indicate building permit(s) were issued in 1961 and 1968 to construct a dwelling on the TMK property. Since 1961, approximately 572 square feet of the original dwelling's floor area was designed for or utilized as a veterinary office. County records indicate continuous dwelling and veterinary office use(s) during the last 40 + years. Subsequent building and site improvements for the dwelling and veterinary office include paved and striped off-street parking spaces for patients.

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about October 24, 2003. The variance application site plan map drawing is drawn to scale and is dated and signed on October 12, 2003 by KKM SURVEYS. The variance site plan map denotes the location of the "2 Story Structure" or dwelling encroachments, "AS-BUILT" into the minimum front yard and attendant open yard or clear space requirements.

3. **Agency Comments and Requirements-WH (VAR 03-075):**

- a. The Department of Public Works (DPW) memorandum dated December 5, 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).
2. The stair access to the lower level shall be removed from the County right-of-way, with edge of slope fall protection provided in a manner meeting with the approval of the Department of Public Works. A permit for work within the County right-of-way shall be obtained."

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The copy of the DPW memorandum dated November 28, 2004, states in part:

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

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. 006137, 006394, 015132, H24739, and H38974 and Electrical Permit No. 015119 are not finalized.”

- b. The State Department of Health (DOH) memorandum dated February 5, 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 24, 2003 and November 28, 2003, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received:

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were built in 1990 after the original 1961 dwelling was completed by the previous owner-DVM. The applicant, on behalf of the current owner, is trying to resolve building encroachment issues that were built pursuant to a building permit issued in 1990 (BP No. 906005). The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, “AS BUILT” on “LOT 2”. The site plan identifies the building or “2-Story Structure” position together with other building issues within the property's minimum front yard and attendant open yard requirements pursuant to the Hawaii County Zoning Code. The applicant or current owner

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recently became aware of building encroachment issues created circa 1990. No evidence has been found to show indifference or premeditation by previous contractors, builders, and owner(s) to deliberately create or intentionally allow the building encroachments to be built. According to the applicant, the encroachments were built pursuant to a 1990 building permit and other construction permits issued by the County issued to the property or by a previous owner; and, it appears that inspections by the agencies, at that time-1990, did not disclose any building encroachment issues or unusual 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 within the front yards or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 2 with adjoining lot/right-of-way 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 original dwelling improvement constructed in 1961. It appears that subsequent building additions or encroachments into the minimum front yards and open space requirements constructed by a previous owner were not immediately detected or disclosed by a recent survey map. These 14 year old building or structure encroachments are not physically and visually obtrusive from adjoining property(s) or public right-of-way. And, it appears that 14 year old improvements do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the existing building or portions of the "2 Story Structure" within the front yards identified on the variance application site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by letter dated November 20, 2003. Additional time to consider the applicant's request and review past building permit records 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 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 a building located on the subject TMK property or Lot 2 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows portions of the 2-story structure or building encroachments to remain, "AS BUILT", on the subject TMK property (Lot 2) according to variance application's site plan map which is dated and signed by RPLS on October 12, 2003.
4. The outstanding building and construction permits issued to the 2-story dwelling or structure located on the subject TMK property (Lot 2) shall be closed or "finalized" by the DPW-Building Division prior to transfer of title or sale of the property.

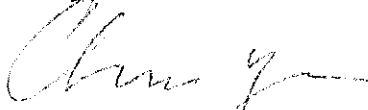
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The applicant shall confer with the DPW and coordinate removal of "Concrete Steps" denoted on the variance site plan map within the Walua Road right-of-way. Pedestrian access between the road right-of-way and subject TMK property/use shall be resolved between the applicant/current owner and the DPW.

5. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 2), 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