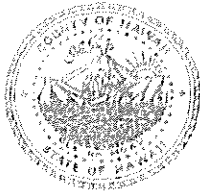


Harry Kim
Director



Christopher T. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Paauhahi 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. 1445 WH (VAR 03-076)

Applicant: KLAUS D. CONVENTZ
Owners: KENNETH WALKER, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-033:066, Lot 66

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1445 allows portions of a dwelling ("1-Story House") to remain, "AS-BUILT", on the subject TMK property, Lot 66, with a minimum side yards of between 7.0 feet to 10.0 feet side yard and attendant minimum 3.2 feet side yard open space, in lieu of the minimum 10.0 feet side yard and attendant minimum 5.0 feet side yard open space requirements, respectively, according to the variance site plan dated October 23, 2003. Portions of a wooden deck will be removed to comport with minimum yard requirements. 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 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 66 containing 12,000 square feet, is located within Kona Palisade Subdivision, Unit II, File Plan 1087, being a portion of Grant 2972 to Kaapau and Kama, and situated at Kalaoa 5th, 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).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about November 3, 2003. The variance application site plan map drawing dated October 23, 2003 was prepared by Wes Thomas Associates and drawn to scale. The site plan map denotes the location of the building ("1-Story House" and attached "Wooden Deck") encroachments, "AS-BUILT" into the minimum side yard and attendant side yard open space requirements.

The applicant's background states in part:

"Although the encroachment is 3.0 ft. relative to the Northerly boundary, it is limited to the extreme Northwest corner only; accordingly, the attendant roof overhang encroaches by 1.8 ft. into the side yard open space.

The Applicant/Representative has (sic) advised the owners to cut the entire deck back to the house wall, and that any Westerly extension may not exceed 5.0 ft. into the side yard setback, with single posts only. Please refer to the highlighted area."

3. **Agency Comments and Requirements-WH (VAR 03-076):**

- a. The Department of Public Works (DPW) memorandum dated December 1, 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)."

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The copy of the DPW memorandum dated November 28, 2003, states in part:

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

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3-ft. rear

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

- 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 November 2, 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 written comments or objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

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 and other site improvements, "AS BUILT" on "LOT 66". The site plan identifies the dwelling's building position 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 recently became aware of building encroachment issues and no evidence has been found to show indifference or premeditation by contractors, builders, and/or developer to deliberately create or intentionally allow the dwelling

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valid building permit(s) and 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.

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 A-74) with adjoining lot (A-75) 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 affected side yard 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 October 9, 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/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 dwelling and wooden deck on the subject TMK property or Lot 66 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows dwelling encroachments identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (Lot 66).
4. Any building and construction permits to remove the portions of the "Wooden Deck" highlighted on the variance site plan map shall be addressed by the applicant/current owner. Any building or construction permits to construct the original dwelling/deck and/or permits to remove wooden deck improvements shall be closed or "finalized" by the DPW-Building Division prior to transfer of title or sale of the property.
5. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 66), 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.

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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 Office - Kona
Planning Dept. - Kona