



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. 1447 WH (VAR 03-078)


Applicant: KLAUS D. CONVENTZ
Owners: MARLENE CALVERT
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 9-2-093:012, Lot 21

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1447 allows portions of a dwelling ("House"/"Deck") to remain, "AS-BUILT", on the subject TMK property, Lot 21, with a minimum side yards of between 18.43 feet to 19.47 feet and attendant minimum 6.01 feet to 7.21 feet side yard open space, in lieu of the minimum 20.0 feet side yard and attendant minimum 14.0 feet side yard open space requirements, respectively, according to the variance site plan dated and signed October 25, 2003. The variance request is from the subject TMK property'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), 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 21 containing 48,225 square feet, is located within Lot 21, Block 158, Hawaiian Ocean View Estates Subdivision, File Plan 787, Grant 2791, and at Kahuku, Kau, Hawaii.

Hawaii County is an equal opportunity provider and employer.


1055913

JUN 07 2004

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
June 1, 2004

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" 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 7, 2003. The variance application site plan map drawing is drawn to scale and was certified on or about October 25, 2003 by Donald C. McIntosh, L.P.L.S. The site plan map denotes the location of the dwelling, deck, and water tank encroachments, "AS-BUILT" into the minimum yards and attendant open yard or clear space requirements.

The applicant's background states in part:

"In addition, the owner was advised, and will comply, to remove the staircase inside the setback/open space relative to the Eastern boundary. This is why the staircase is not included in this variance application."

3. **Agency Comments and Requirements-WH (VAR 03-078):**

- 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)."

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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
June 1, 2004

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 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 November 10, 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 or comments from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered after substantial building had been completed. 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/deck/water tank and other site improvements, “AS BUILT” on “LOT 21”. 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 became aware of building encroachment issues after a survey map presented during escrow and no evidence has been found to show indifference or premeditation by contractors, builders, or previous owner(s) to deliberately create or intentionally allow the dwelling encroachment to be constructed. The dwelling improvements were constructed under valid building permit(s) and other construction permits issued by the County to a previous owners; and initial inspections by the agencies, at that time, did not disclose any building encroachment issues or building setback irregularities.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
June 1, 2004

According to the applicant, the water tank straddling a common boundary line between subject TMK (Lot 21) and adjoining property (Lot 22) and stairway was removed and/or relocated.

ALTERNATIVES

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

1. Remove the dwelling or deck encroachments, relocate the water tank, and/or redesign or relocate the dwelling-deck/water tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 21 with adjoining Lot 22 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.

According to the applicant, the dwelling/deck encroachments into the minimum yards are not physically and visually obtrusive from adjacent property(s) or rights-of-way. No oral or written objections to the variance request by the adjoining property(s) or surrounding property owners were received. As such, it appears that the portions of the "House" and attached "Deck" encroachments 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 dwelling and deck 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 November 20, 2004. Additional time was required to consider agency comments and confirm the water tank relocation with the applicant. The applicant, on behalf of the owners, agreed to extend the decision date to on or before 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

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
June 1, 2004

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

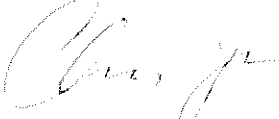
This variance request is approved subject to the following conditions:

1. The applicant/owners, 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 deck located on the subject TMK property or Lot 21 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 21).
4. Any outstanding building and/or construction permits to construct the dwelling improvements or relocate the water tank on the subject TMK property (Lot 21) shall be closed or "finaled" 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 21), 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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
June 1, 2004

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
P:\WP60\WRY\FORMLETT\VARAPPZCTMK920093012.BC

xc: Real Property Tax Office - Kona
Planning Dept. - Kona