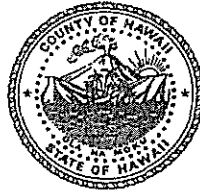


Harry Kim
Mayor



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 10, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1455 WH (VAR 04-004)

Applicant: KLAUS D. CONVENTZ
Owners: WALTER KOENIG, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-050:028, Lot 28

7-3-050:028

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1455 allow portions of a dwelling to remain, "AS-BUILT", on the subject TMK property, Lot 28, with a minimum 18.6 feet to 19.7 feet side yard in lieu of the minimum 20.0 feet side yard according to the variance site plan map dated and signed on May 28, 2003. The variance request is from the subject TMK's minimum (northerly) side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 28 containing 43,561 square feet, is located within Kona Hills Estates Subdivision, Unit 1, File Plan 1695, and situated at Ooma 2nd, North Kona, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

Hawaii County is an equal opportunity provider and employer.

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about December 15, 2003. The variance application site plan map was prepared by KKM SURVEYS and dated and signed May 28, 2002. The survey map, drawn to scale, denotes the dwelling location and encroachments, "AS-BUILT" into the minimum 20 feet side yard.

The applicant's background states in part:

"The property received under its predecessor Building Permit No. 905712 for the initial dwelling on May 1, 1990; Building Permit No. 906352 for the swimming pool and related improvements on October 2, 1990; and Building Permit No. 996270 for an addition on November 9, 1999.

The owners were unaware of any problem until a setback survey conducted by KKM-Surveys revealed the encroachments on May 28, 2002."

Note: The variance request does not address the cesspool location, propane tank location or walls/fences/landscaping improvements located on the property, and any other boundary issues along or straddling common boundary lines shared with the adjoining property(s).

3. **Agency Comments and Requirements-WH (VAR 04-004):**
 - a. The Department of Public Works (DPW) memorandum dated January 20, 2004, 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 January 16, 2004, 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

Others: The Building permit #906352 & 996270 and the plumbing permit #005526 are not final.”

- b. The State Department of Health (DOH) memorandum dated January 30, 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 to surrounding property owners was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on December 15, 2003 and January 13, 2004, 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 dwelling encroachment issues discovered during escrow. 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 28”. The site plan identifies the dwelling’s building position within the affected minimum 20 feet wide side yard pursuant to the Hawaii County Zoning Code. The applicant or current

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owners became aware of building encroachment issues during escrow and no evidence has been found to show indifference or premeditation by contractors, builders, or current owners to deliberately create or intentionally allow the dwelling encroachments to be built within the side yard. The dwelling improvements were constructed under valid building permit(s) and other construction permits issued by the County; and initial inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

The status of the active DPW-building or other construction permits issued to the TMK property will be addressed and resolved by the applicant or current owners (Refer to variance conditions).

ALTERNATIVES

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

1. Remove the dwelling encroachments within the affected side yard or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 28 with adjoining Lot 29 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 dwelling encroachments into the (northerly) side yard are not physically and visually obtrusive from the adjoining property (Lot 29) or rights-of-way. It appears that the 14 + year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the dwelling encroachments within a side yard 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 January 7, 2004 and additional time to consider agency comments was necessary. The applicant agreed to extend the

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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:

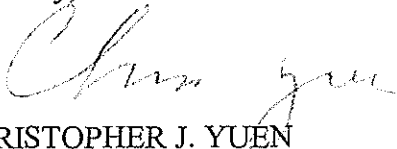
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 dwelling on the subject TMK property or Lot 28 will not meet Chapter 25, the Zoning Code's minimum side yard requirement. The approval of this variance allows dwelling encroachments identified on the variance application's site plan map dated and signed on May 28, 2002, to remain, "AS BUILT", on the subject TMK property (Lot 28).
4. The following DPW-Permit(s): Building Permit #906352, Building Permit #996270, and Plumbing Permit #005526; issued to the TMK property or Lot 28, 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 28), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.

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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

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