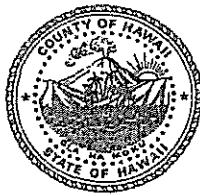


Harry Kim
Mayor



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. 1452 WH (VAR 04-010)

Applicant: KLAUS D. CONVENTZ
Owner: BRIAN BRADLEY
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-8-014:064, Lot 15

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1452 to replace non-conforming single-story "CARPORT" with single-story garage and recognize the building position of non-permitted roof/trellis building improvements, "AS-BUILT", between "RESIDENCE" and "STUDIO" on subject TMK property, Lot 15, according to the applicant's variance site plan map dated and signed on November 17, 2003. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (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 15 containing 0.27 acre, is located within Kahaluu Beach Lots, Bishop Estate Map 1249-A-1, being a part of Royal Patent 6856, Land Commission Award 7713, Apana 6 to V. Kamamalu, and situated at Kahaluu, North Kona, Hawaii.

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The property is zoned Single-Family Residential (RS-7.5) 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 January 12, 2004. The variance application site plan map, prepared by Pattison Land Surveying Inc., is dated and signed on November 17, 2003. The survey map, drawn to scale, denotes all building positions and encroachments, "AS-BUILT", into the property's minimum yards and affected side yard open space.

The applicant's background states in part:

"The main house was built under Building Permit No. 24348 issued April 26, 1961, while the detached studio was built under Building Permit No. 24347, issued April 27, 1961.

The permit record and status of inspections is incomplete, which is typical for the time period of over 40-years ago. No permit could be found for the detached carport. However, the enclosed tax assessor's sketch dated October 12, 1961, also shows the 580 sq. ft. (20'x20') carport.

Mr. Bradley would like to correct the situation by replacing the existing carport 20'x29' with a 2-story 24'x18' garage and second-floor storage and family room area. Although two (2) legal dwellings are located on the property, they both lack proper storage space. In addition, the front dwelling is only a two-bedroom dwelling, while the rear studio is at best a one-bedroom structure with a substandard second room."

Note: The variance allows 1) "AS-BUILT" improvements between the dwelling and studio and 2) demolition of 1-story carport to be replaced with an enclosed "1-Story Garage" pursuant to subsequent discussions with the applicant and requirements of the DPW-Building Division and other county building codes. **The applicant's request to permit "2-story 24'x18' garage and second-floor storage and family area" will not be granted.** The proposed replacement "1-Story Garage" building's footprint shall be limited to 600 square feet and maximum 14-foot building height.

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

3. **Agency Comments and Requirements-WH (VAR 04-010):**

- a. The Department of Public Works (DPW) memorandum dated March 15, 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).”

The copy of the DPW memorandum dated March 11, 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”

- b. The State Department of Health (DOH) memorandum dated March 17, 2004 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

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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 January 6, 2004 and March 3, 2004, respectively, by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No following letters and objections from surrounding property owners or public were received:
 - a. Objection letter dated January 10, 2004 received from Harry and Doris Varteresian Trust.

 - b. Objection letter dated March 11, 2004 received from Harry and Doris Varteresian Trust.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, is trying to resolve the “non-permitted” building encroachment issues between “RESIDENCE” and “STUDIO” and replace a non-conforming carport with a new garage pursuant to a recent survey map of the property. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling and carport building improvements together with other site improvements, “AS BUILT” on “LOT 15”. The site plan identifies the dwelling improvements and carport’s building position and other building encroachment issues within the affected yards pursuant to the Hawaii County Zoning Code. The applicant or current owner became aware of building encroachment issues after they purchased the property and recent survey map of the property was prepared. No evidence has been found to show indifference or premeditation by current owner to deliberately create or construct the “non-permitted” building improvement or encroachments between the “RESIDENCE” and “STUDIO” buildings constructed prior to 1967. In addition, the applicant, on behalf of the current owner, is requesting a variance to permit a new 1-story enclosed garage to replace the non-conforming 1-story open carport structure that was built or established on the property prior to 1967. The proposed replacement 1-story garage will be subject to current DPW building position requirements.

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ALTERNATIVES

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

1. Remove the dwelling/garage encroachments or redesigning or relocating the dwelling/studio and replacement garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 15 with adjoining property(s) 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 and existing carport are not physically and visually obtrusive from adjoining property(s) or Alii Drive. It appears the 43 + year old building improvements on the property do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the existing building encroachments within a side yard identified on the variance application's site plan map and proposed "1-Story Garage" replacement building will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 23, 2004. Additional time was required to consider comments received from adjoining property owner and discuss the original variance request and other building options with the applicant. The applicant, on behalf of the owner, agreed to extend the decision date to on or before May 31, 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.

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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/owner, 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 "non-permitted" building improvements, "AS-BUILT" on subject TMK property or Lot 15 will not meet Chapter 25, the Zoning Code's minimum yard and attendant open space requirements pursuant to variance site plan map dated and signed on November 17, 2003. The building encroachments between the "RESIDENCE" and "STUDIO", are allowed to remain, "AS-BUILT" and "CARPORT" identified on the variance site plan map is allowed to be replaced with a new 1-Story Garage. **The proposed garage's building footprint shall be limited to 600 square feet and maximum 14-foot building height.**

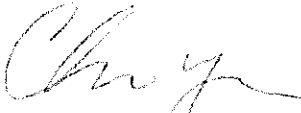
The applicant or current owner shall confer with the DPW-Building Division and secure building permit(s) and associated constructed permits for the roof/trellis improvements between "RESIDENCE" and "STUDIO" and construction of proposed replacement 1-story garage building.

4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 15), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses shall be subject the variance site plan map and 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
Harry and Doris Varteresian Trust