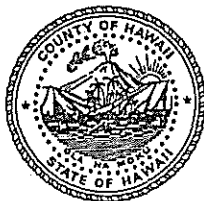


Harry Kim
Mayor



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

July 6, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1458 WH (VAR 04-012)
Applicant: KLAUS D. CONVENTZ
Owner: RICHARD BUFFINGTON
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-036:006, Lot 6

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1458 allows portions of a storage building to remain, "AS-BUILT", on the subject TMK property, Lot 6, with a minimum 18.0 feet rear yard in lieu of the minimum 20.0 feet rear yard required according to the variance application site plan map and other information submitted with the variance application. The variance request is from the subject TMK property's minimum rear yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 6 consisting of 17,399 square feet, is located within Kealoha Plantation and situated at Hienaloli 4th, North Kona, Hawaii. The property's address is 75-286 West Kawena Place.

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The property is zoned Single-Family Residential (RS-15) 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 15, 2004. The applicant's variance application site plan map drawing is drawn to scale. This site plan map denotes the location of the building encroachments within the minimum 20 feet rear yard, "AS-BUILT".

The applicant's background states in part:

"Richard Buffington purchased the property by Deed dated April 15, 1997, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 97-048012.

The dwelling received tow (2) Building Permits, No. 965471 for the initial dwelling with garage, and No. 965996 for an addition to the residence.

Right after the residence was finished, the same construction crew built the rear yard storage shed. Obviously, the developer assumed that the contractor would apply for the permit, so did the owner, who was unaware of any problem until a Notice of Violation and Order (ZVC 03-048W) dated November 6, 2003, was delivered on January 5, 2004, by the Zoning Inspector, Jay McEarthron, of the Kona Office.

The encroachment was found pending a survey of the neighbor lots to the South by KKM-Surveys on October 17, 2003, of which owner had no knowledge before January 5, 2004, when the Notice of Violation was received. Mr. Buffington does not contest this finding by KKM-Surveys."

Note: The dwelling's wastewater system is not located or identified on the site plan map. The variance request does not address the location of stonewalls straddling common boundary lines or any other issues related to property use. Any existing perimeter walls and/or landscape materials straddling TMK boundary lines or other boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

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3. **Agency Comments and Requirements-WH (VAR 04-012):**

- 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 attached DPW memorandum dated March 11, 2004 states in part:

“We oppose the approval of the application for the reasons 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 electrical permit No. 965490 is not finale (sic).”

- b. The State Department of Health (DOH) memorandum dated March 11, 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 15, 2004 and March 20, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners and/or public were received:

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the accessory building ("STORAGE SHED") encroachment problems were recently discovered during a survey of the area and constructed without a separate county Building Permit. The applicant, on behalf of the current owner, is trying to resolve the building encroachment and permit issues. The variance application's site plan denotes the location of the building improvements and other site improvements, "AS BUILT" on "LOT 6". The site plan identifies the storage building encroachments within the property's minimum rear yard pursuant to the Hawaii County Zoning Code. The applicant or current owner became aware of building encroachment issues after a complaint was investigated by the Planning Department. No evidence has been found to show indifference or premeditation by the current owner(s) to deliberately create or intentionally allow the building encroachment problems within the rear yard to occur. It appears that the dwelling improvements were constructed under 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 permit irregularities. The current owner is honestly trying address the status storage building located on the TMK property and resolve the building permit required for the detached storage building and building encroachment issues cited in the complaint.

ALTERNATIVES

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

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1. Remove the building encroachments or redesigning or relocating the storage building to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property (Lot 6) 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 detached storage building's encroachments into the rear 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 building 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 February 23, 2004 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 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:


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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 the "STORAGE BUILDING" improvements on "LOT 6" will not meet Chapter 25, the Zoning Code's minimum rear yard requirements. The approval of this variance allows the storage building encroachments identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (LOT 6).
4. The applicant shall contact the DPW-Building Division in Kona to secure an "after-the-fact" building permit for the "STORAGE SHED" and close or "final" outstanding electrical permit-BP No. 965490 prior to any change in title or sale of the subject TMK property.
5. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property (LOT 6), subject to provisions of the 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

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cc: Real Property Tax Office-Kona
Planning Dept.-Kona
Zoning Inspector-Kona