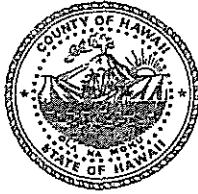


Harry Kim
Mayor



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. 1453 WH (VAR 04-020)

Applicant: KLAUS D. CONVENTZ
Owner: DONNA L. BALL
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 9-9-009:019, Lot 149

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1453 allows portions of a dwelling-carport/roof eaves and water tank to remain, "AS-BUILT", on the subject TMK property, Lot 149, with a minimum 15.92 feet rear yard and 3.25 feet side yard open space, respectively, to remain in lieu of the minimum 20.0 feet rear yard and 5.0 feet side yard open space requirement according to the variance application site plan map dated January 12, 2004. The variance request is from the TMK property's minimum rear yard and minimum side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B), 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 149 consisting of 12,078 square feet, is located within Volcano and County Club Subdivision, Unit III, and situated at Keauhou, Kau, Hawaii.

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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 February 2, 2004. The variance application's site plan map is drawn to scale and was certified on or about January 12, 2004 by The Independent Hawaii Surveyors. The site plan map denotes the location of the dwelling and water tank encroachments, "AS-BUILT" into the minimum rear yard and attendant side yard or minimum side yard clear space requirements.

The applicant's background states in part:

"The dwelling received Building Permit No. 010118 on January 25, 2001.

Owner was unaware of any problem until a survey conducted by Niels Christensen on January 12, 2004, revealed the encroachments, while the property is subject to escrow procedure of conveyance."

3. **Agency Comments and Requirements-WH (VAR 04-020):**

- a. The Department of Public Works (DPW) memorandum dated March 9, 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 8, 2004, states in part:

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

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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 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 February 2, 2004 and March 3, 2004, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter from a surrounding property was received:
 - a. Objection letter dated February 7, 2004 from Baptist Torres Jr.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, 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/water tank and other site improvements, “AS BUILT” on “LOT 149”. The site plan identifies the dwelling’s and water tank building positions within the property’s minimum yards and attendant open yard requirements pursuant to the Hawaii County Zoning Code. The applicant or current owner became aware of building encroachment issues after a survey map was presented during escrow. No evidence has been found to show indifference or premeditation by the current owner, contractors, and builders to deliberately create or intentionally allow the dwelling and water tank encroachments to be constructed. The dwelling and water tank improvements were constructed under valid building permit(s) and other construction permits issued by the County; and, inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

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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 and relocate the water tank and/or redesign or relocate the dwelling and other site improvements to fit within the building envelope prescribed by minimum yards of the Zoning Code.
2. Consolidation of Lot 149 with adjoining lot(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.

According to the applicant, the dwelling and water tank encroachments into the minimum yards are not physically and visually obtrusive from adjacent property(s) or rights-of-way. The encroachment issues were disclosed by a recent survey of the property. As such, it appears that the portions of the "HOUSE" and attached "WATER TANK" encroachments do not depreciate or detract from the character of adjoining property(s), common area, and surrounding land use patterns. Therefore, it is felt that the existing dwelling and water tank 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 February 23, 2004. Additional time was required to consider agency and other comments received. 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 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/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 "HOUSE" (Dwelling) and "WATER TANK" located on the subject TMK property or Lot 149 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows dwelling and water tank encroachments identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (Lot 149).
4. Any outstanding building and/or construction permits to construct the dwelling improvements or relocate the water tank on the subject TMK property (Lot 149) 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 149), 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
Mr. Baptist Torres, Jr.