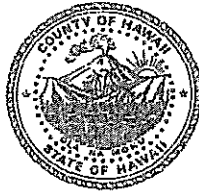


Harry Kim
Mayor



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

April 26, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1436 WH (VAR 04-032)

Applicant: KLAUS D. CONVENTZ
Owner: KAHAKAI KONA LLC
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-040:096, Lot 96

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1436 allows the "AS BUILT" position of a 1-story dwelling being constructed on Lot 96 or subject TMK property in accordance with a certified site plan map prepared by a licensed surveyor. The variance allows the dwelling to remain, "AS BUILT", with a minimum 17.2 feet front yard and minimum 14.4 feet front yard open yard space in lieu of the minimum 20 feet front yard and attendant minimum 14 feet front yard open space requirements. 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)(2)(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 96 containing 0.502 acre, is located within "Kahakai Estates Subdivision", File Plan 2333, and situated at Puapuaa 1st and 2nd, North Kona, Hawaii. The property's address is 75-142 Kamilo Street.

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The property is zoned Single-Family Residential (RS-10) 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 17, 2004. The variance application site plan map drawing is drawn to scale and was certified on or about February 9, 2004 by Ryan M. Suzuki, RPLS. The site plan map denotes the location of the dwelling encroachments, "AS-BUILT" into the minimum yards and attendant open yard or clear space requirements.

The applicant's background states in part:

"It is obvious that the concrete contractor committed an honest mistake when staking the foundation of the concrete slab."

3. **Agency Comments and Requirements-WH (VAR 04-032)**:
 - 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 15, 2004, states in part:

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

The minimum setbacks shall be maintained as follows:
Residential structures-3 ft. side, 3-ft. rear
Commercial structures-5 ft. side, 5 ft. rear

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Others: The building permit No. 035771, 036396, and plumbing permit No. 036428 are not finale.”

- b. The State Department of Health (DOH) memorandum dated March 29, 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 20, 2004 and March 9, 2004, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letter and comments regarding the development-subdivision or TMK was received:
 - a. Letter and request was received on or about March 16, 2004 from Robert Corsair.

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 and other site improvements, “AS BUILT” on “LOT 96”. 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 recently became aware of building encroachment issues and no evidence has been found to show indifference or premeditation by contractors, builders, and/or developer to deliberately create or intentionally allow the dwelling encroachment to be constructed. The new dwelling improvements are being 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.

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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 building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 96 with adjoining lot(s)/right-of-way 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 minimum yards are not physically and visually obtrusive from adjacent property(s) or rights-of-way. It appears the building 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 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.

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.

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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 being constructed on the subject TMK property or Lot 96 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 96).
4. The outstanding building and construction permits to construct the dwelling improvements on the subject TMK property (Lot 96) shall be closed or "finalized" 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 96), 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.

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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dba Baumeister Consulting
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xc: Real Property Tax Office - Kona
Planning Dept. - Kona
Mr. Robert Corsair