

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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August 18, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1470 WH (VAR 04-051)

Applicant: KLAUS D. CONVENTZ
Owners: YOSHITAKA KAMII, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-046:065, Lot 23

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1470 allows portions of a dwelling to remain, "AS-BUILT", on the subject TMK property (Lot 23), with a minimum 18.8 feet to 19.8 feet side yard in lieu of the minimum 20.0 feet side yard and minimum 23.1 feet rear yard open space in lieu of the minimum 24.0 feet rear yard open space requirements, according to the variance application site plan map dated April 12, 2004. The variance request is from the subject TMK's minimum side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

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1. **Location.** The subject property, Lot 23 consisting of 43,563 square feet, is within Kona Acres Subdivision , Unit 2, Increment A (File Plan 1348), being a portion of Grant 5046 to K. Kama, Jr., and situated at Ooma 1st, North Kona, Hawaii. The property's address is 73-4433 Nehiwa Street.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about April 21, 2004. The applicant's variance application site plan map drawing, drawn to scale, was prepared by Wes Thomas Associates. This site plan map denotes the location of the building ("1-Story House") encroachments within affected minimum 20 side yard and minimum 30 feet rear yard, "AS-BUILT".

The applicant's background states in part:

"The dwelling received under predecessor Building Permit No. 896272, issued September 7, 1989, and a swimming pool Building Permit No. 896576, issued November 7, 1989.

Owners were unaware of any problems until a survey, conducted by Wes Thomas & Associates on April 12, 2004, revealed the encroachments."

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 CRM walls near or along 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).

3. **Agency Comments and Requirements-WH (VAR 04-051):**
 - a. The State Department of Health (DOH) memorandum dated May 18, 2004 states:

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

- b. The Department of Public Works (DPW) memorandum dated May 24, 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).
2. The applicant shall remove any encroachments within the County Right-of-Way."

The attached DPW memorandum dated May 12, 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"

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 April 21, 2004 and May 11, 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:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the building encroachment issues were recently discovered during the sale of the property. The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues. The variance application's site plan denotes the location of the dwelling improvements and other site improvements, "AS BUILT" on "LOT 23". The site plan identifies the dwelling encroachments within the property's minimum yards pursuant to the Hawaii County Zoning Code. 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) issued to previous owner(s) did not disclose any building encroachment issues or building permit irregularities. The current owners are honestly trying to address the status of the dwelling position located on the TMK property.

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 the subject TMK property with adjoining lots (Lot(s) 10, 11, and 23) 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's encroachments into the affected yards are not physically and visually obtrusive from adjoining property(s) or rights-of-way. It appears that the building encroachments 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 the minimum yards on LOT 23 will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by letter dated April 28, 2004 and additional time to consider agency comments and applicant's request 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 August 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:

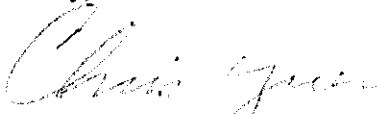
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 "1-Story House" or dwelling improvements on "LOT 23" will not meet Chapter 25, the Zoning Code's minimum side yard, rear yard, and attendant minimum rear yard open space requirements, "AS BUILT". The approval of this variance allows the building encroachments to remain, "AS BUILT", pursuant to the variance site plan map dated April 12, 2004.
4. Any building permits or construction permits issued to subject TMK property shall be "finalized" or closed prior to any change in title or sale of the subject TMK property.

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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, 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.

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:cd

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