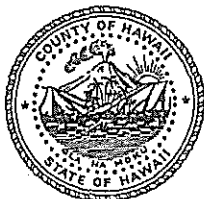


Harry Kim
Mayor



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

September 9, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1473 WH (VAR 04-057)

Applicant: KLAUS D. CONVENTZ
Owners: SHAWN C. NAKAKURA, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-7-023:009, Lot 3

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1473 allows portions of dwelling or "Dwelling" and "Garage" to remain on subject TMK property, "AS-BUILT", with minimum 16.81 feet to minimum 24.71 feet rear yard in lieu of the minimum 25 rear yard pursuant to the applicant's variance site plan map submittal dated and signed May 21, 2004. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, (1).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 3 containing 23,116 square feet, is within Ohai Makai Estates, Lot 3, and situated at Holualoa 4th, North Kona, Hawaii. The TMK property's street address is 77-1108 Kalaniuka Street.

The property is zoned Residential and Agricultural-half acre (RA-.5a) by the County and designated Rural "R" by the Land Use Commission (LUC).

Hawai'i County is an equal opportunity provider and employer.

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about June 8, 2004. The applicant's variance application site plan map drawing, drawn to scale, was prepared by KKM SURVEYS. According to the variance site plan map and report, a portion of the "Dwelling" and "Garage" were built within the TMK property's minimum 25 feet rear yard.

The applicant's background states in part:

"The property received Building Permit No. 965887, issued October 19, 1996, for a greenhouse, which was removed when the residence was built under Building Permit No. 005795, issued May 17, 2000.

Owners were unaware of any problems until a survey, conducted by KKM-Surveys on May 21, 2004, revealed the setback encroachments.

It appears from undersigned's site inspection that the contractor committed an honest staking error, in particular due to the extreme slope and irregular shape of the property. No evidence of malice and intent could be substantiated during the inspection. Neither the owners nor the contractor would have benefited as a result of the violation."

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 "Chain Link Fence" near or along the property's rear boundary line or any other issues related to property use. Any existing fencing 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 04-057):**
 - a. The Department of Public Works (DPW) memorandum dated July 1, 2004, states in part:

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“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 June 30, 2004 states in part:

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

Others: The plumbing permit No. M006007 is (sic) never finalized.”

- b. The State Department of Health (DOH) memorandum dated July 21, 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 June 8, 2004 and July 2, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter from surrounding property owner(s) was received:
 - a. Objection letter dated July 18, 2004 from Michele Hudson, Et al.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the building encroachment issues were recently discovered after a survey of the property was completed. The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues. The variance application’s site plan denotes the

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location of the dwelling and garage, "AS BUILT" on "LOT 3". The site plan identifies the dwelling and garage encroachments within the property's minimum rear yards pursuant to the Hawaii County Zoning Code. It appears that the dwelling and garage 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 the TMK property did not disclose any building encroachment issues or building permit irregularities. The current owners are honestly trying to address the position of the dwelling and garage on the TMK property.

ALTERNATIVES

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

- A-1. Remove the building encroachments or redesigning or relocating the dwelling and garage within the correct building envelope prescribed by the Zoning Code.
- A-2. Consolidation of the subject TMK property with adjoining lot (Lot 4) 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 and garage encroachments into the property's rear yard are not physically and visually obtrusive from adjoining property(s) or visible from the right-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 these building encroachments within the rear yard of LOT 3 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 25, 2004 and additional time to review applicant's background and complete the variance background 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 September 15, 2004.

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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

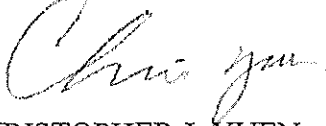
This variance request is approved subject to the following conditions:

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 a "Dwelling" and "Garage" on "LOT 3", "AS-BUILT", will not meet TMK property's minimum rear yard pursuant to Chapter 25, Zoning. The approval of this variance allows the dwelling and garage encroachments, "AS-BUILT", to remain on "LOT 3", pursuant to the variance site plan map dated and signed on May 21, 2004.
4. The outstanding DPW permit-M006007 issued to subject TMK property shall be "finaled" or closed prior to any change in title or sale of the subject TMK property.
5. 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: OD 94-293-File
Real Property Tax Office - Kona
Planning Dept.- Kona
Ms. Michele Hudson – Kaiulani Subdivision