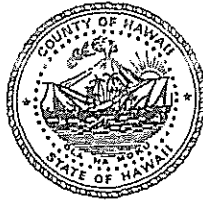


Harry Kim
Mayor



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

October 27, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1484 WH (VAR 04-059)

Applicant: KLAUS D. CONVENTZ
Owners: STEVEN CORNACCHIA, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-7-009:018, 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.1484 allows portions of a "Garage", "AS-BUILT", with a minimum 11.0 feet to 17.3 feet side yard and attendant minimum 7.0 feet to 15.3 feet side yard open space requirements in lieu of the minimum 20 feet side yard and attendant minimum 14 feet side yard open requirements pursuant to the variance site plan map dated June 10, 2004. The variance request is from Hawaii County Code, Chapter 25, from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 3 containing 5.100 acres, being a portion of Grant 3141 to Kekaula, is situated at Waikakuu, South Kona, Hawaii.

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The property is zoned Agricultural (A-5a) 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 June 14, 2004. The variance application site plan map drawing is drawn to scale and dated and signed on June 10, 2004 by Wes Thomas Associates. The site plan map denotes the location of the "Garage" encroachments, "AS-BUILT" into the minimum side yard and attendant open yard or clear space requirements.

Note: The applicant's background states in part:

"Owners were unaware of any problem until a survey conducted on June 10, 2004 by West Thomas Associates revealed the encroachments."

The wastewater system is not located or identified on the site plan map. The variance request does not address location or position of walls or fences straddling common boundary lines and any other issues related to property use. Any perimeter walls and/or landscape materials straddling TMK boundary lines or other boundary encroachments within adjoining property 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 04-059):**

- a. The Department of Public Works (DPW) memorandum dated July 1, 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)."

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The attached copy of DPW memorandum dated June 30, 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-3ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear

Others: The plumbing permit No. M035969 is (sic) never finalled.”

- 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 15, 2004 and July 2, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, is trying to resolve the “Garage” encroachment issues. The variance application’s site plan map was prepared by a surveyor and denotes the location of the building improvements and other site improvements, “AS BUILT” on “LOT 3”.

The site plan identifies the garage encroachments within the property’s affected side yard and attendant open yard requirements pursuant to the Hawaii County Zoning Code.

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The applicant and/or current owners became aware of building encroachment issues after the survey map was prepared for escrow. No evidence has been found to show indifference or premeditation by the contractors or current owner(s) to deliberately create or intentionally allow the building and eave encroachments to be constructed. Building records show the dwelling improvements were built pursuant to a building permit and other 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 or construction permits did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

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

1. Remove the building (Garage) encroachments or redesigning or relocating the building to fit within the correct building envelope prescribed by Plan Approval and the Zoning Code.
2. Consolidation of Lot 3 with adjoining property (Lot 2) 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 portions of the garage and respective eaves within the affected side yard and required open spaces are not physically and visually obtrusive from adjacent property (Lot 2) or right-of-way fronting Lot 3. These garage encroachments do not depreciate or detract from the character of the surrounding neighborhood, public rights-of-way, and surrounding land patterns. Therefore, it is felt that the encroachments within the respective side yard identified on the variance application site plan map 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 June 25, 2004 and additional time to 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 October 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/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 the "Garage" located on the subject TMK property or Lot 3 will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum open yard requirements. The approval of this variance allows portions of the garage or encroachments identified on the variance application's site plan map dated June 10, 2004, to remain, "AS BUILT", on the subject TMK property (LOT 3).
4. The applicant or current owner(s) shall confer with the Department of Public Works (DPW) Engineering Division in Kona to close or "final" Building Permit No. 026319 and Permit No. M035969.

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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.

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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xc: Real Property Tax Office-Kona
Planning Department-Kona