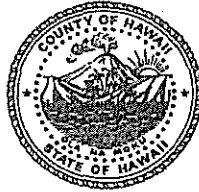


Harry Kim
Mayor



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

November 10, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1487 WH (VAR 04-061)
Applicant: KLAUS D. CONVENTZ
Owners: FREDERICK HOLCOMB, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 5-2-012:005, Lot 25

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1487 allows portions of Garage/Workshop, to remain on subject property, "AS-BUILT", with minimum 2.9 feet side yard and attendant minimum 0.9 feet side yard open spaces in lieu of the minimum 10 side yard and attendant minimum 5 feet side yard open yard requirements, respectively, pursuant to the applicant's variance site plan map submittal dated and signed June 15, 2004. 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) (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, containing 20,517 square feet, is Lot 25 of Land Court Application 1332, Map 5, and situated at Niulii, North Kohala, Hawaii. The TMK property's address is 52-206 Bus Stop Road, Kupaau.

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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 June 25, 2004. The variance application's site plan map, is drawn to scale, and was prepared by KKM SURVEYS. The site plan map identifies the "Garage/Workshop" or building encroachments within the minimum side yard and side yard open space requirements.

The applicant's variance letter or background states in part:

"The 1-story single-family dwelling was built in 1943 according to the tax record. No permits for the initial house were available. On January 31, 1963 Building Permit No. 26981 (440 sq. ft. garage) was issued. The garage/workshop, however was built bigger than the permit provided for. In addition, Building Permit No. 926105 with related permits reflects additions to the home itself. While the related electrical permit received final inspection, the building permit and related plumbing permits were still open.

The owners were unaware of any setback problem until June 15, 2004, when a survey conducted by KKM-Surveys revealed the encroachments of the garage relative to the southerly boundary with Lot 26.

The neighbor of Lot 26 has no problem with the application, in particular since Lot 26 is at least in grade 3 feet higher than the Holcomb's lot.

Otherwise, the violation is not visually perceptible from neighbor lots or public view."

Note: The variance request does not address the location of any stonewalls along common boundary shared with adjoining property(s)/or landscape materials near or straddling common boundary lines.

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3. Agency Comments and Requirements-WH (VAR 04-061):

- a. The Department of Public Works (DPW) memorandum dated July 21, 2004, states in part:

“We reviewed the subject application and our comments are as follows:

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-Building Division memorandum dated July 21, 2004 states in part:

“We opposed the approval of the application for the reasons noted below.

The building permit 926150 for the subject dwelling was never finalized.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear

The exterior wall or projections do not meet setback requirements and should be corrected.

The exterior wall or projections shall be constructed to provide a one-hour Fire resistive occupancy separation.

Others: The plumbing permit No. M925754 and M945402 are (sic) never finalized.”

- b. The State Department of Health (DOH) memorandum dated August 19, 2004 states:

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"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 26, 2004 and July 22, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public**. No further written agency comments were received. The following objection letters and/or comments to the variance application were received:
 - a. Objection letter dated August 27, 2004 from Gilbert Bigtas regarding privacy, etc.

Note: According to applicant and copy of a recent letter dated October 23, 2004, the current owner(s) will pay (\$2000.00) for a "Privacy Fence" on the adjoining property-Lot 26.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, is requesting a variance to permit portions of the building improvements to be allowed within the affected side yard and attendant open space requirements. The applicant or current owner(s) will secure the necessary permits for the "non-permitted" portion of the garage/workshop. According to the applicant, the current owner's "are honestly trying to correct all shortcomings in the improvements". The owners have contacted the adjoining property owner to address privacy issues between the garage/workshop use within the minimum yards and adjoining property owner. According to a copy of a recent sent to the adjoining property owner (Gilbert Bigtas) dated October 23, 2004, the current owner(s) of the subject TMK property will pay or construct a "Privacy Fence" on the adjoining property-Lot 26, along a common side boundary line shared between subject TMK property or Lot 25 and adjoining Lot 26; "pin to pin". (Refer to variance conditions).

ALTERNATIVES

Alternatives available to the applicant include the following:

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1. Construct proposed dwelling the building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining property (Lot 26) 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.

The Planning Director acknowledges the objections and concerns cited by the adjoining property owner. The proposed original dwelling and other building improvements were established on the property prior in 1943. According to the applicant, the current owner's expanded beyond the original garage/workshop's "footprint" constructed in 1963. Portions of the "non-permitted" Garage/Workshop addition were constructed within the minimum side yard and attendant open yard requirements of the Zoning Code adopted in 1967.

The subject variance application was acknowledged by letter dated July 13, 2004 and additional time to consider agency comments and allow the applicant/owners to address and respond to objections and comments received from an adjoining property owner was necessary. The applicant agreed to extend the date to complete the variance background report and render a decision on the subject variance to no later than November 15, 2004.

Based on the foregoing findings and other unusual circumstances, 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:

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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/Workshop" will not meet Chapter 25, the Zoning Code's minimum side yard and attendant front yard open space requirements. The approval of this variance permits proposed building position identified on the variance application's site plan map to remain subject to DPW building requirements.

The applicant or current owner shall contact the DPW-Building Division-Kona and secure and "final" any active or necessary building permits and construction permits for the "after-the-fact" Garage/Workshop addition.

The privacy fence shall be constructed on adjoining property Lot 26 on or before June 30, 2005. The applicant or current owner(s) shall submit a "plot plan" to confirm the height and location of the "privacy fence" on Lot 26 and progress report regarding the status of the fence improvements shall be submitted for the variance file on or before March 30, 2005.

4. 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.
5. Future building improvements and permitted uses on the property 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:cd
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xc: Real Property Tax Office-Kona
Planning Dept.- Kona
Gilbert Bigtas