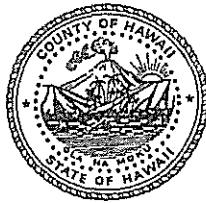


Harry Kim
Mayor



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 20, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1478 WH (VAR 04-065)

Applicant: KLAUS D. CONVENTZ
Owners: DAVID N. DUNLAP, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-6-010:022, Lot 1-B

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1478 allows portions of a dwelling to remain on subject property, "AS-BUILT", with minimum 13.7 feet to 14.2 feet side yard in lieu of the minimum 15 feet side yard, pursuant to the applicant's variance site plan map dated and signed on July 26, 2004. The variance request is from the TMK property's minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, (2).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 1-B containing 27,292 square feet, being a portion of R.P. 7819, L.C. Aw. 8559-B and portion of Holualoa 1st and 2nd. Makai Section, is situated at Holualoa 1st and 2nd, North Kona, Hawaii. The TMK property's street address is 76-897 Hualalai Road.

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The property is zoned Residential and Agricultural Districts (RA-.5) by the County and designated Rural "R" by the Land Use Commission (LUC). Ohana Dwelling Permit (OD 89-29) to construct an "ohana" or second dwelling unit on the TMK property was issued on March 3, 1989 (Refer to applicant's report or background information cited below).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about July 27, 2004. The applicant's variance application site plan or survey map drawing is drawn to scale and certified by a surveyor on July 26, 2004. The survey map by KKM Surveys shows dwelling positions, garage, and other site improvements, "AS BUILT", on "LOT 1-B".

Note: The variance site plan map does not show existing cesspool location(s) or required wastewater systems. The variance request does not address any landscaping improvements or CRM walls situated on the property. Any boundary encroachments or landscaping improvements straddling common lines must be resolved by the applicant or between affected parties or between legal property owner(s).

The applicant's background states in part:

"The property received Building Permit No. 886207 on December 19, 1988 for subject single family dwelling; Building Permit 905030, issued January 8, 1990 for the 2-story single-family Ohana along the easterly boundary (Ohana Permit OP (sic) 89-29); Building Permit 925804, issued June 30, 1992 for a detached garage (along westerly boundary).

The owners were unaware of any problem until a survey conducted by KKM-Surveys on July 23, 2004 revealed the violation while the property was subject to escrow procedure in pending sale."

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3. **Agency Comments and Requirements-WH (VAR 04-065):**
 - a. The Department of Public Works (DPW) memorandum dated August 24, 2004, states in part:

"We have reviewed the subject application and have no comments or objections."

The attached DPW-Building Division memorandum dated August 19, 2004 states in part:

"We have no comments or objections to the application."

b. The State Department of Health (DOH) memorandum dated September 9, 2004, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
3. **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 the first and second notice was mailed on July 28, 2004 and August 23, 2004 by the applicant.
4. **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

It appears that the building encroachment issues were discovered during escrow or sale of the subject property. The applicant, on behalf of the current owners, is trying to resolve building encroachment issues. The variance application's site plan map was prepared by a surveyor and shows both dwelling(s), garage, and other site improvements, "AS BUILT", on Lot 1-B.

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The variance site plan map shows a portions of a dwelling was built (circa 1988) beyond the lot's building envelope into one of Lot 1-B's side yards pursuant to Chapter 25, Zoning. The applicant or current owners became aware of the building encroachment issues after the survey map was prepared and presented during escrow. No evidence has been found to show indifference or premeditation by current owners or builders to deliberately create or intentionally allow the dwelling encroachment problem to occur.

It appears that both dwelling(s), detached garage, and other site improvements were constructed under valid building permits and construction permits issued by the County. It appears that building inspections of the subject TMK property by the agencies during construction of the dwelling and other improvements 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. Removing the encroachments or redesigning or relocating the dwelling improvements and related site improvements elsewhere on the subject property.
2. Consolidation with portions of the adjoining property (Lot 1-A) and resubdivision of the resultant lot to modify a common boundary line and respective side 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 these building encroachments within the affected side yard are not physically noticeable or visually obtrusive from adjacent property(s) or the existing rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns.

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Therefore, it is felt that that the dwelling encroachments within the affected side yard not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 16, 2004 and additional time to complete the background report 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 15, 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:

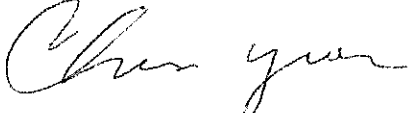
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owner(s), 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 on the subject tax map key property (Lot 1-B) will not meet Chapter 25, the Zoning Code's minimum side yard. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan map dated and signed July 26, 2004, to remain, "AS BUILT", on Lot 1-B or the subject TMK property.

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4. 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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xc: Real Property Tax - Kona
Planning Dept. - Kona
OD 89-29-Hilo File