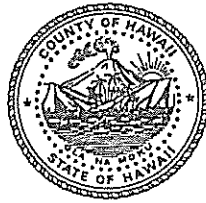


Harry Kim
Mayor



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

June 21, 2005

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. VAR 05-012
Applicant: KLAUS D. CONVENTZ
Owner: DONNA M. SPRINGER
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 7-6-024:016, Lot 16

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-012 allows the dwelling ("2-Story House") and deck encroachments to remain, "AS-BUILT", on Lot 16, with minimum 19.0 feet to minimum 19.6 feet rear yard and 4.7 feet side yard open space according to the variance site plan map dated January 26, 2005. The variance request is from the subject TMK property's minimum 20.0 feet rear yard and minimum 4.0 side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A), 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 16 containing 10,001 square feet, is within Kalani Makai, Unit I, being portions of R.P. 4475, L.C. Aw. 7713, Ap. 43 to V. Kamamalu and R.P. 8217, L.C., Aw. 3660 to John P. Munn, and situated at Holualoa 1st and 2nd, North Kona, Hawaii.

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1 JUN 22 2005

The property is zoned Single-Family Residential (RS-10) by the County and designated "Urban" by the State Land Use (SLU) Commission. The TMK property is within the Special Management Area (SMA). However, the TMK property does not abut the shoreline.

Ohana Dwelling Permit (OD 89-242) "to construct the Ohana Dwelling" on the subject TMK property-Lot 16 was granted, subject to conditions, pursuant to the permit letter dated August 17, 1989.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about January 31, 2005. The applicant's variance application site plan or map drawing is drawn to scale and dated January 26, 2005. The variance application's site plan or survey map by Wes Thomas Associates denotes the building envelope, dwelling ("2-Story House-Deck") and other site improvements on "UNIT 2".

Note: The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) located on "UNIT 2". The location of the fencing and landscaping planting improvements near or along the property's boundary lines or straddling common boundary lines shall be addressed and resolved by the applicant/current owner(s).

3. **Agency Comments and Requirements-WH (VAR 05-012):**

- a. The Department of Public Works (DPW) memorandum dated March 9, 2005, states in part:

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

- b. The State Department of Health (DOH) memorandum dated March 8, 2005, states:

"The Heath 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 the first and second notice was mailed on January 31, 2005 and March 7, 2005, respectively, by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated January 26, 2005.

The applicant, on behalf of the owner, filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", within "UNIT 2" or "LOT 16". A small portion of a dwelling's footprint or living area and deck is constructed beyond the denoted building set-back line or building envelope into the property's rear yard and one of Lot 16's minimum side yards pursuant to the Hawaii County Zoning Code. The current owner(s) or applicant became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the 16 year old dwelling and deck improvements were constructed built circa 1989 according to the applicant and County building permit records. It appears that building inspections of the premises by the respective agencies during the construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities in 1989. The location of any planting materials or landscaping improvements straddling common boundary lines or within the public right-of-way shall be resolved by the applicant/current owner (Refer to Variance Permit Conditions).

ALTERNATIVES

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

1. Removing the existing building encroachments or redesigning or relocating the dwelling and portion of the deck to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within 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 small portions of the dwelling and deck within the property's rear yard and affected side yard are not physically noticeable or visually obtrusive from adjacent property(s) or right-of-way (ROAD A). It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land pattern.

Therefore, it is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 22, 2005. Additional time to consider agency comments was deemed necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance.

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.

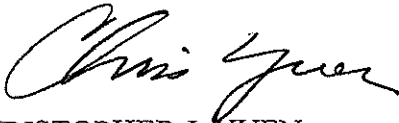
3. Portions of a "2-Story House and Deck" on "LOT 16-UNIT 2" will not meet Chapter 25, the Zoning Code's minimum rear and side yard requirements according to the variance application's site plan map dated January 26, 2005. The approval of this variance allows the dwelling improvements on "UNIT 2" or "LOT 16" to remain, AS BUILT, on the subject TMK property or "LOT NO. 9", pursuant to the variance site plan map.

Any fencing or landscaping improvements straddling common boundary line(s) shall be addressed between the applicant/current owner(s) prior to any change in ownership or sale of the property.

4. Future building improvements and permitted uses on the subject tax map key property-Lot 16 are 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: je/cd

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xc: Real Property Tax - Kona
Planning Department - Kona
OD 89-242