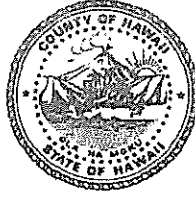


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED™ AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Aupuni Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

February 13, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (WH) VAR 05-028
Applicant: KLAUS D. CONVENTZ
Owners/Lessees: DOUGLAS E. MCKANNA, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-8-004:067, 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. 05-028 allows portions of a 2-story (second) farm dwelling to remain, "AS-BUILT", on Lot 16, with minimum 2.3 feet to minimum 8.9 feet side yard and attendant minimum 2.0 feet to minimum 9.1 feet side yard open space according to the variance site plan map signed and dated March 10, 2005. The variance request is from the subject TMK property's minimum 20.0 feet side yard and attendant minimum 14.0 side yard open space requirement pursuant to the to 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 16 containing 9.50 acres, is within Keauhou 1-2 Farm Lots, Bishop Estate Map No. 5388, and situated at Keauhou 2, North Kona, Hawaii. The property's street address is 78-6889 Palekana Road.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "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 March 16, 2005. The variance application's site plan map drawing is drawn to scale and signed on March 10, 2005 by Kevin McMillen, LPLS, or KKM SURVEYS. The site plan map denotes the location of the "Dwelling", "Drying Deck-Hopper Shed", etc. encroachments, "AS-BUILT", within the southern 20 feet side yard of the subject TMK property "LOT 16".

The applicant's background states in part:

"The dwelling was built likely in part under Building Permit No. 762528 issued November 10, 1976, by one of predecessor lessees, with various unpermitted additions and conversions, including, but not limited to the hopper shed and drying deck building, all of which are attached to the dwelling and the workshop. The site inspection revealed that those changes were made over the last 30 years."

"In addition all lean-to style structures and attachments to the 2-story subject workmen's quarters with storage below, with posts, roofs, cantilever, etc, on the first floor will be permanently removed from the property, including the parts which encroach onto Lot 17 (South).

"The owners are making considerable efforts to correct the accumulated errors and violations of the past by various predecessors in the lease, together with a tremendous monetary and labor investment. One of those commitments will be the complete remaining structure inventory plans (as-built and as should be) in order to obtain all required permits, if the Planning Department will hopefully grant the variance.

Due to the sheer size of the subdivision's properties, high density "orchard" tree farm growth, and no neighbor structure in close proximity, the encroachment, sharply reduced as outlined above, would not be visually perceptible from neighbor lots or public view."

Note: On or about March 28, 2005, the applicant submitted an application for additional farm dwellings to the Kona Planning Department. According to a letter dated May 26, 2005, the Planning Director approved the farm dwelling application to allow 2-additional farm dwellings on the subject TMK property subject to conditions dated May 26, 2005.

3. **Agency Comments and Requirements-(WH) VAR 05-028:**
 - a. The State Department of Health (DOH) memorandum dated April 27, 2005 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The Department of Public Works (DPW) did not submit any comments.
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 March 15, 2005 and April 4, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letters or written comments or objections from surrounding property owners or public were received:
 - 5a. Letter and comments dated April 7, 2005 from John Weeks II.
 - 5b. Letter and comments dated April 9, 2005 from Alan Bremer.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners/lessees, is trying to resolve the dwelling encroachments within the property's (southerly) minimum 20 feet side yard and attendant 14 feet minimum side yard open space. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling(s) and other building improvements or site improvements, "AS BUILT", on "LOT 16". (Note: the applicant indicates the current lessees of Lot 16 also lease Lot 17 from the Bishop Estate). According to the Farm Dwelling Agreement application's background report, there are at least 7500 coffee trees on Lot 16. The site plan map identifies the dwelling's building position on Lot 16 and identifies the building encroachment on Lot 17. The applicant and the current owners/lessees became aware of building encroachment issues after a survey and survey map of the property was completed or prepared to address the encroachment issues on Lot. No evidence has been found to show indifference or premeditation by the current owners/lessees to deliberately create or intentionally allow these building encroachments to be built on Lot 16 and Lot 17.

Mr. Klaus D. Conventz
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Page 4

February 13, 2006

It appears that the existing dwelling improvements and subsequent building additions and/or associated farm building improvements were constructed under valid building permits issued to Lot 16 or without building permits on Lot 16 by a previous lessee. It appears that initial inspections by the agencies did not disclose any building encroachment issues or building irregularities. The current owners/lessees will remove and relocate some of the building encroachments within the affected side yard of Lot 16 and remove and the building encroachments on Lot 17. Any necessary or "after-the-fact" building permits for permitted farm dwelling(s) and/or 30 +/- year old farm buildings on Lot 16 will be addressed by the applicant and/or current lessees of Lot 16 and Lot 17. (Refer to variance conditions)

ALTERNATIVES

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

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 16 with adjoining lot (Lot 17) and resubdivision to modify property lines or adjust minimum yards. Note: The lessees are currently leasing Lot 16 and Lot 17 from the Bishop Estate.

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 30 year old dwelling and farm building encroachments into the affected 20 feet side yard and associated open yard spaces are not physically and/or visually obtrusive from the adjacent property (Lot 17) or nearest publicly owned right-of-way. It appears that these 30 + year old "farm" dwelling encroachments within the affected side yard of Lot 16 will not depreciate or detract from the character of the surrounding neighborhood or surrounding building or land patterns. The current owners/lessees will remove and/or relocate the drying shed/hopper and other farm buildings (with proper building permits) to within the property's building site. Nearly two-thirds of the building encroachments within the affected 20-foot wide side yard and building encroachments into Lot 17 will be completely removed and/or relocated elsewhere within the Lot 16's building site.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
February 13, 2006

The subject variance application was acknowledged by letter dated March 22, 2005 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and 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 second farm dwelling situated on the subject TMK property or Lot 16 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. All permitted buildings on the subject TMK property shall comply with minimum UBC building setbacks and building code requirements. The approval of this variance permits the second farm dwelling to remain, "AS BUILT", on the subject TMK property (Lot 16), provided "after-the-fact" building permit(s) and associated construction permits for any permitted farm dwelling(s) and/or accessory farm buildings are secured from the Department of Public Works (DPW).

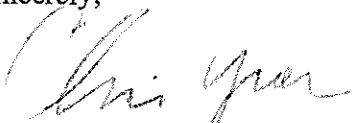
The Additional Farm Dwelling Agreement Application (2005-0049) conditions stipulated in a letter dated May 26, 2005 affecting subject TMK property shall be addressed and met by the applicant and/or the owners/lessees.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
February 13, 2006

4. Future or new 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
John D. Weeks II
Alan Bremer