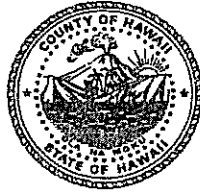


Harry Kim
Mayor



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 10, 2002

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1323 WH (VAR 02-044)

Applicant: KLAUS D. CONVENTZ
Owners: LEE H. TURNER, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-6-023:039, Lot 81

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1323 allows portions of a garage with a minimum 19.3 feet to 19.8 feet rear yard, "AS BUILT", to remain on the subject property according the variance site plan map dated June 20, 2002. The variance request is from Lot 81's minimum 20 feet rear yard requirement, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 81 consisting of 10,183 square feet, is located within Komohana Kai, Unit I, being a portion R.P. 4475, L.C. Aw. 7713, Ap. 43 to V. Kamamalu, and situated at Holualoa 1st and 2nd, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC). The improved property is located within the Special Management Area (SMA).

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Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
October 10, 2002

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on July 5, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 20, 2002. The survey map by Wes Thomas Associates shows the dwelling position, roof eave location, and other site improvements, "AS BUILT", on "LOT 81", pursuant to an actual survey done on June 13, 2002.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS) or site improvements straddling common boundary lines or other boundary encroachments. Any boundary encroachments must be addressed and resolved by the applicant or between affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-044):**

- a. The State Department of Health (DOH) memorandum dated August 1, 2002, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

- b. The Department of Public Works (DPW) memorandum dated August 9, 2002, states in part:

"We have reviewed the subject application and offer the following comment:

Please refer to the attached Building Division comments dated July 29, 2002."

The attached DPW-Building Division memorandum dated July 29, 2002 states in part:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
October 10, 2002

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

The Electrical #07543, Plumbing MH42634 permit for the subject has no status of inspections.”

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 July 8, 2002 and July 27, 2002 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

It appears that the building encroachment problems were discovered during escrow or sale of the subject property. The applicant, on behalf of the owners, is trying to resolve the garage or building encroachment issues created on or about March 13, 1987. The variance application's site plan map was prepared by a surveyor and shows the dwelling and garage positions and other site improvements, "AS BUILT", on Lot 81. The variance site plan map show small portions of the garage are constructed beyond the lot's building lines or building envelope into the Lot 81's rear yard, pursuant to the Hawaii County Zoning Code. 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 the current owners or previous builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the building improvements were constructed under valid building and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling and garage improvements did not disclose any building encroachment issues or building setback irregularities.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
October 10, 2002

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's garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property(s) 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 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 small building encroachments into the rear yard are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that the building encroachments have not affected the adjoining property(s) or neighborhood or severely changed or altered the surrounding land patterns. Therefore, it is felt that the small building or garage encroachments 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 June 24, 2002 and additional time to consider agency comments 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, 2002.

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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
October 10, 2002

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

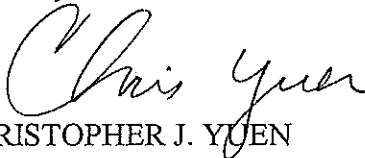
This variance request is approved subject to the following conditions:

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/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 will not meet Chapter 25, the Zoning Code's minimum rear yard requirement. The approval of this variance allows the garage and garage encroachments identified on the variance application's site plan map dated June 20, 2002, to remain, "AS BUILT", on Lot 81 or the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division (Kona) to close permit(s): Electrical #07543 and Mechanical MH42634 prior to any change in title or sale of the subject TMK property.
5. 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 Lot 81 or the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
October 10, 2002

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:cps

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xc: Real Property Tax - Kona
Planning Dept. - Kona