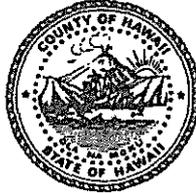


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

August 22, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 04-035 (VAR NO. 1479)
Applicant: KLAUS D. CONVENTZ
Owner: BENNETT JACOBY
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-047:087, Lot 5

Pursuant to your request, the subject heading and TMK parcel number stated in our earlier letter dated October 20, 2007 approving "VARIANCE APPLICATION WH (VAR 04-035)" is hereby amended and corrected to read as the above subject heading.

Thank you bringing this matter to our attention.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-Kona

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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October 20, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1479 WH (VAR 04-035)

Applicant: KLAUS D. CONVENTZ
Owner: BENNETT JACOBY
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-047:084, Lot 5

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1479 permits proposed accessory building (CARPORT/GARAGE/WORKSHOP) to be constructed on subject TMK property, Lot 5, with a minimum 20.0 feet front yards and attendant minimum 14.0 feet front yard open space from the TMK property's front boundary line along Kohanaiki Homestead Road. The variance is from minimum 30.0 feet front yard and attendant minimum 24.0 feet front yard open space requirements according to the variance application site plan map (Revised: July 27, 1998) and other information included with the variance application. The variance request is from subject TMK's minimum front yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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OCT 22 2004

Mr. Klaus D. Conventz
dba Baumeister Consulting
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BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 5 consisting of 44,933 square feet, is within Kona Heavens Subdivision, Unit III, File Plan 1837, portion of R.P. 8214, L.C.Award 7715, Apana 11 to Lota Kamehameha, and situated at Kaloko, North Kona, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "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 February 23, 2004. The variance application site plan map drawing is drawn to scale and dated "JULY 6, 1998 (ADDED WALLS)" by Wes Thomas Associates. The applicant utilized this site plan and denoted the proposed building location and annotations.

For the record, VAR 954 was granted in 1998 for a portion of a pool equipment room (accessory building) constructed within a northwest side yard.

The applicant's background states in part:

"Bennett Jacoby intends to convert the carport into a closed-in lanai and accessory living area. Another reason to eliminate the carport is the gasoline fumes blown into the dwelling by the nightly mauka breeze, which is more than just an inconvenience."

"The large level area between dwelling/enclosed storage and the u-shaped retaining rockwall close to Kohanaiki Homestead Road is best suited location for the proposed garage and workshop accommodating in addition parking space and turn-around. (sic)

Although the Homestead Road is not the main access road to subject property, under the Zoning Ordinance a 30.0 ft. setback and attendant open space of 24.0 ft. is required.

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dba Baumeister Consulting
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However, this 30.0 ft. setback line would, if strictly applied under the Zoning Code, force the owner to move the proposed garage away from the retaining wall, cutting deeply into the parking and turn-around into the center of the existing level terrace between house and rear wall.

For all practical purposes, and due to the considerable higher elevation of the Kohanaiki Homestead Road, a reduction from 30.0 ft. to 20.0 ft. setback, and an attendant open space from 24.0 ft. to 14 ft., would provide owner with a more orderly and pleasing design and final development of the property, while at the same time airflow and light between structure(s) and property line would not be measurably adversely impacted, the purpose and intent of setback regulations under Chapter 25 C.C.

The rooftop/ridge of a standard-size garage/workshop with a 5.0 ft. high roof, would result in a structure less than 15.0 ft. high, which would mean that the top of the roof would still be at least 7.0 ft. lower than the road's surface, separated between the retaining wall and road by steep grade/slope.

Considering also the dense vegetation between structure and road, the garage would not be visually perceptible from the adjoining traffic area and public view, since mostly hidden behind the existing retaining wall in any case."

Note: The dwelling's cesspool or wastewater system was not identified or located on the variance site plan map. The variance request does not address the location of stonewalls or CRM walls along the property's boundary lines or any other issues related to property use. Any existing perimeter or retaining walls and/or landscape materials near or straddling TMK boundary lines must be addressed and resolved by applicant or between current owner(s).

3. **Agency Comments and Requirements-WH (VAR 04-035):**

- a. The Department of Public Works (DPW) memorandum dated March 15, 2004, states in part:

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

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dba Baumeister Consulting
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BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

The DPW-Building Division memorandum dated March 15, 2004 states in part:

"Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

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

- b. The State Department of Health (DOH) memorandum dated March 22, 2004 states:

"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 February 21, 2004 and March 9, 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:

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dba Baumeister Consulting
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- a. Letter dated March 12, 2004 from Joseph W. Augustine, Et al.
- b. Letter dated March 15, 2004 from Henry Hills.
- c. Letter dated March 17, 2004 from Raymond P. Gray.
- d. Letter dated March 20, 2004 from Erwin Myhre, Et al.
- e. Letter(s) dated March 19, and March 20, 2004 from Tsing Cannon.
- f. Letter dated March 20, 2004 from Kona Heavens Association, Inc. (Signed by Lilian Beaufrere).

The applicant requested copy(s) of comments and objections letters received. The applicant requested a site inspection by Planning Department staff to verify the property's topography and other unusual "climatic" conditions within the property. Subsequent to receipt of objections letters, the applicant requested copy(s) of objection letter received and staff to visit subject TMK property. The applicant accompanied staff on an April 16, 2004 staff inspection to verify site conditions and unusual "air circulation" near the existing dwelling and parking area. Subsequent to the April 16, 2004 site inspection, the applicant forwarded a letter dated April 20, 2004 and response to objection letters received and included color photographs of the property and proposed building site area located "mauka" of the existing dwelling and other photographs or views of the property taken from the "makai" shoulder along the old Kohanaiki Homestead Road. In addition, the applicant requested additional time for staff and Planning Director to consider the unusual circumstances, i.e. the property's air circulation or "wind" patterns within the present garage and around the dwelling, etc., alternative access to the proposed building from Kohaniki Homestead Road, and "lay of the land" within an area originally cleared and graded to be a tennis court. According to the applicant, the existing carport will be modified into a "lanai". The proposed "Carport/Garage/Workshop" will be sited within a proposed or partially constructed "tennis court". Refer to photographs in file and further discussion and findings cited below).

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, is requesting a variance to permit portions of the proposed garage (accessory building) to be built within the minimum 30 feet front yard along the Kohanaiki Homestead Road. The variance application's site plan map was prepared by a surveyor and includes annotations by the applicant to identify the proposed location of proposed accessory building. The site plan identifies the existing driveway and carport position.

The April 2004 staff inspection confirmed alternative access to the property from the Kohanaiki Homestead Road right-of-way was partially constructed and current access to the dwelling and carport from Manu-Mele Street is severe. Air circulation around the existing dwelling and carport area is limited or restricted due to the "lay of the land". Portions of the proposed accessory building or proposed encroachments within the front yard along the Kohanaiki Homestead Road right-of-way would not be visible or detected by motorists using both rights-of-way fronting the property or by surrounding property owners. The overall height or apex of the proposed building's roof will not exceed the Kohanaiki Homestead Road "pavement", and views of the proposed accessory building will be not be highly visible from the Manu-Mele Street right-of-way.

ALTERNATIVES

Alternatives available to the applicant include the following:

1. Construct proposed "accessory" building within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with portion of old road right-of-way 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.

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dba Baumeister Consulting
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The Planning Director acknowledges the objections and concerns cited by surrounding property owners contacted and Community Association. However, the property's access to the existing carport and topography or "lay of the land" along Manu-Mele Street is severe and the air circulation patterns or natural ventilation within and around the dwelling and carport is limited due to the dwelling's central position within the property and other limiting circumstances caused by the property's unusual topography and air circulation patterns. The property is "sandwiched" between 2-rights-of-way and can access both rights-of-way. The existing access driveway and driveway slope from Manu-Mele Street to existing parking area is severe. The proposed second access to the proposed carport/garage/workshop and transition from Kohanaiki Homestead Road and the dwelling improvements appears to be safer and affords easier access to the proposed detached garage building. The proposed new carport/garage/workshop or accessory building's encroachment into the affected front yard or proposed building's position will not be highly visible from both roadways and not depreciate or detract from the character of the surrounding neighborhood or surrounding buildings and land patterns. Therefore, it is felt that the proposed accessory building's encroachments and position within the affected front yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 24, 2004 and additional time to consider agency comments, inspect the property, and allow the applicant to address and respond to objections and comments received from surrounding property owners and Association 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 October 15, 2004.

Based on the foregoing findings and site inspection of the property, 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 proposed "Accessory Building" will not meet Chapter 25, the Zoning Code's minimum front 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 be constructed on the subject TMK property. Portions of proposed "CARPORT/GARAGE/WORKSHOP" is permitted with a minimum 20 feet front yard and attendant 14 feet front yard open space.
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 and within proposed accessory carport/garage/workshop building 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
Joseph W. Augustine, Et al.
Henry Hills
Raymond P. Gray
Erwin Mayhre, Et al.
Tsing Cannon
Lilian Beaufrere (Association)