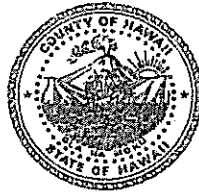


Harry Kim
Mayor



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

August 18, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1469 WH (VAR 04-050)

Applicant: KLAUS D. CONVENTZ
Owners: SCOTT B. MARKS, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-019:025, Lot R-4

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1469 allows portions of the 2-story dwelling, "AS-BUILT", to remain on subject property, bounded by roadways, and allow future building improvements to be built with minimum 15 feet front yards and attendant minimum 10 feet front yard open spaces in lieu of the minimum 20 feet front yards and attendant minimum 14 feet front yard open yard requirements, respectively, pursuant to the applicant's variance site plan map submittal dated and signed on April 18, 2004. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

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Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
August 18, 2004

1. **Location.** The subject property, Lot R-4 containing 0.267 acre, is a portion of Grant 3735 and Lot 19, Kohanaiki Homesteads, and situated at Kohanaiki, North Kona, Hawaii.

The property is zoned Agricultural (A-3a) 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 April 21, 2004. The applicant's variance application site plan map drawing is drawn to scale. This site plan map denotes the location of the building encroachments within the minimum 20 feet front yards, "AS-BUILT". The TMK property is a "remnant lot" with frontage along the "Old Mamalahoa Highway", "Homestead Road", and "Hawaii Belt Road" rights-of-way. The building envelope or "building site" within the property is further reduced by severe topography between the rights-of-way and the "flat" usable building area. The transition between the existing rights-of-way or roadway grade to a "plateau" or area (within the building envelope) is severe. The building site is approximately 20 feet to 30 feet above the road shoulder and road pavement. The driveway access location and steep on-site driveway grade up to the dwelling improvements limits building options or positions.

The applicant's background states in part:

"It appears from the site inspection by undersigned that the contractor committed an honest staking error when the initial (southerly) dwelling part was placed, which is easily explained due to the very irregular shape, the size, and the steeply changing topography of the land. No evidence of malice and intent could be substantiated during the inspection. Neither the owner nor the contractor would have benefited as a result of a violation.

Subsequently, a laundry shed along Hawaii Belt Road and a storage shed along the Old Mamalahoa Highway were both placed partially onto the public right-of-way, and will be pending this application completely removed permanently.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
August 18, 2004

Although the property size is 11,631 sq. ft., and therefore subject to 20.0 feet all-around setbacks, the buildable area is reduced to less than an (sic) RS-7.5 zoned lot would have, considering only 15.0 feet front and rear setbacks, and 8.0 feet side setbacks.

For example, a 75'x100' RS-7.5 zoned lot with 7,500 sq. ft. land has a buildable area of 4,130 sq. ft., while this property with 11,631 sq. ft. of land has only 3,047 sq. ft. of buildable land, if the 20.0 feet all-around front setbacks would be strictly applied and enforced.

Needless to mention that even this extremely reduced "buildable" area would not be 100% buildable due to the very irregular shape, at its southerly end with a zero width. The fact is that the actual buildable land is in reality less than 2,500 sq. ft.

Even if this application for a 15.0 feet setback would be granted by the Planning Director, it would result in an actual buildable area of less than 4,000 sq.ft., or less than a regular shaped RS-7.5 zoned lot as calculated would have for its improvements.

With the approval of a 15.0 feet setback line in lieu of the 20.0 feet setbacks no violation on the southwest corner into the current 20.0 (sic) setback would remain."

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

The property is subject to "Agreement" recorded at the State of Hawaii Bureau of Conveyance on July 14, 1987 at Liber 20897, Page 528.

3. **Agency Comments and Requirements-WH (VAR 04-050):**

- a. The State Department of Health (DOH) memorandum dated May 18, 2004 states:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
August 18, 2004

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated May 24, 2004, states in part:

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

BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. The applicant shall remove any encroachments within the County Right-of-Way."

The attached DPW memorandum dated May 12, 2004 states in part:

"We oppose the approval of the application for the reasons 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"

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 April 21, 2004 and May 11, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners and/or public were received:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
August 18, 2004

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the building encroachment issues were recently discovered during the sale of the property. The applicant, on behalf of the current owner, is trying to resolve the building encroachment issues and address future building yard requirements. The variance application's site plan denotes the location of the building improvements and other site improvements, "AS BUILT" on "LOT R-4". The site plan identifies the dwelling encroachments within the property's minimum 20 feet front yards pursuant to the Hawaii County Zoning Code. It appears that the dwelling improvements were constructed under valid building permit(s) and construction permits issued by the County. It appears that the building inspections of the premises, during building construction and throughout the life of the building permit(s) issued to previous owner(s) did not disclose any building encroachment issues or building permit irregularities. The current owner is honestly trying to address the status of all building positions and remove the non-permitted buildings or sheds located on the TMK property near the respective rights-of-way.

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 storage building to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining rights-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.

It appears that the dwelling's encroachments into the minimum 20 feet front yards are not physically and visually obtrusive from adjoining property(s) or existing roadway or rights-of-way.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
August 18, 2004

It appears that the building encroachments and request by the applicant to designate minimum 15 feet front yard setbacks will not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, it is felt that the existing building encroachments within the minimum 20 feet front yards and/or request to designate a 15 feet building setback for future building improvements on LOT R-4 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated April 28, 2004 and additional time to consider agency comments and applicant's request 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 August 31, 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, 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, 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 "Dwelling" or building improvements on "LOT R-4" will not meet Chapter 25, the Zoning Code's minimum 20 feet front yard requirements and attendant minimum 14 feet front yard open space requirements, "AS BUILT".

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 7
August 18, 2004

The approval of this variance allows the building encroachments to remain, "AS BUILT", in accordance with the variance site plan map dated and signed on April 18, 2004. According to the applicant, the non-permitted "Shed" near the Old Mamalahoa Highway and "Laundry Shed" near the Hawaii Belt Road will be demolished or removed.

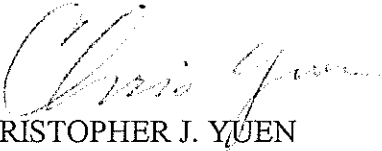
Due to the property's geometry or unusual shape, severe topography, and other limiting circumstances affecting the buildable area within "LOT R-4" or subject TMK property, the minimum front yards and minimum front yard open space for future building improvements shall be subject to minimum 15 feet front yard(s) and attendant minimum 10 feet front yard open space requirements. The 15 feet minimum front yard setback line is denoted on the variance site plan map dated and signed on April 18, 2004.

4. Any building permits or construction permits issued to subject TMK property shall be "finalized" or closed 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 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. Future building improvements shall be subject to minimum 15 feet front yard setback line designated on the approved variance site plan map dated and signed on April 18, 2004.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 8
August 18, 2004

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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cc: Real Property Tax Office-Kona
Planning Dept.-Kona