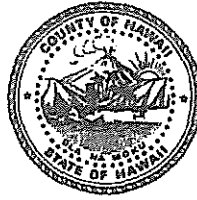


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

June 26, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 04-095

Applicant: KLAUS D. CONVENTZ
Owners: CATHERINE EVANS FAMILY TRUST
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-8-012:001, Lot E-2-A

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 04-095 subject to variance conditions. The variance allows portions of a CRM wall to remain, "AS-BUILT", with an overall maximum wall and gate height of 8.2 feet measured from the street right-of-way and minimum 0.6 feet to 0.9 feet front yard from the lot's front boundary line along Ehukai Street according to Final Subdivision Plat Map (SUB 7885) dated October 28, 2004. The variance is from the TMK property's minimum 20.0 feet front yard and attendant minimum 14.0 feet front 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), Article 4, Division 4, Section 25-4-43, Fences and accessory structures, (c), and Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot E-2-A consisting of approximately 31,873 square feet, being a portion of R.P. 7844, L.C. Aw. 7715, Ap. 12 to Lota Kamehameha, and the whole of R.P. 7044, L.C. Aw. 7366, Ap. 2 to Kukahi, and situated at Keauhou 2nd, North Kona, Hawaii. The subdivision (SUB 7885) to create the subject property (lot) was approved on November 24, 2004 (Note: The subdivision's Final Plat Map denotes the location of existing perimeter walls or "CRM Wall" and "Stonewall" positions along the boundary lines of the subdivision).

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

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about November 1, 2004. The applicant's variance application site plan map drawing dated September 29, 2004, is drawn to scale and prepared by Wes Thomas Associates.
3. **Agency Comments and Requirements-VAR 04-095:**

- a. The Department of Public Works (DPW) memorandum dated January 4, 2005, states in part:

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

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)"
2. Flood Zones "AE" and "VE", affect the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 18, 1988. Any new construction or substantial improvements within flood zones will be subject to the requirements of Chapter 27-Flood Control, of the Hawaii County Code."

The attached memorandum date December 29, 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."

- b. The State Department of Health (DOH) memorandum dated January 6, 2005 states:

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“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 October 29, 2004 and December 20, 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:

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the wall height and setback issues are being addressed to satisfy a complaint regarding the wall's overall height. The applicant, on behalf of the current owners, is trying to resolve the wall (building) height and wall position issues on the subject TMK property (lot) approved by subdivision (SUB 7885) on November 24, 2004. The variance application's site plan dated September 29, 2004 denotes the location of the wall improvements and height of the perimeter wall improvements, "AS BUILT", on the subject TMK property.

A perimeter or Concrete Rock Masonry (CRM) rock wall may be constructed on the subject property without a building permit up to a maximum 6 feet limit. However, a perimeter or CRM wall(s) built within the approved subdivision (lots) beyond a wall height of 6 feet are required to comply with minimum yards and open space requirements pursuant to the Chapter 25, Zoning. Prior to the submittal of the subdivision application, portions of the perimeter CRM wall along the property's front and side boundary line(s) were repaired or reconstructed up to "8.2 feet height" without any construction or building permits issued by the County. Portions of the rebuilt perimeter CRM walls along the front and side boundary line(s) exceed the 6 feet wall height limit. In addition, according to a Planning Department letter, dated December 22, 2004, the subject TMK property (31,873 square feet-Zoned RS-10) or current owners were issued a citation in June of 2004 (prior to approval of the subdivision) "for construction activities without the required building and SMA permits", and, "a SMA Use Permit shall be required for the proposed two additional single-family dwellings, the proposed and existing rock walls in excess of 6 feet in height, and the proposed 200-square foot lanai addition to the guest cottage". The CRM wall height and position issues were not addressed during subdivision review or subdivision approval. The applicant, on behalf of the current owners, is honestly trying to address the wall's height and setback or position requirements for the CRM walls constructed higher than 6 feet height limit.

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ALTERNATIVES

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

1. Remove the portions of the wall exceeding 6 feet or redesigning or relocating the wall to within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining right-of-way or adjoining property(s) and resubdivision to modify property lines or eliminate certain boundary lines, etc.

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 wall's height and position within the property's minimum front and side yards and attendant open yard spaces are not physically and visually obtrusive from the affected right-of-way (Ehukai Street) and adjoining property. The CRM perimeter walls along the right-of-way do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. The subject property (Lot E-2-A) was created recently created by subdivision on November 24, 2004. Therefore, it is felt that the existing CRM wall, "AS-BUILT", along the affected boundary lines will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated December 13, 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.

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. Pursuant to December 22, 2004 Planning Department letter, a SMA Use Permit to permit proposed or additional building improvements on the subject TMK property and allow the existing portions of the perimeter CRM walls built above 6 feet height limit to remain within the affected front and side yards of the subject TMK property shall be secured from the Planning Commission.
4. The approval of this variance allows portions of the existing CRM wall exceeding 6 feet up to height of 8.25 feet or maximum 8 feet 3 inches wall height to remain on the subject TMK property, "AS BUILT", according to the site plan drawing submitted with the variance application **and/or** shall comply with any SMA Use Permit conditions.
5. The applicant or current owners shall confer with the Department of Public Works (DPW)-Building Division to secure any "after-the-fact" permit from the DPW for CRM wall(s) above 6 feet high **and/or** comply with any SMA Use Permit conditions.
6. 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.
7. Future building improvements and permitted uses 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/DSA:cd
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cc: Real Property Tax Office-Kona
SMA-File