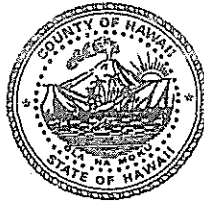


Harry Kim
Mayor



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

September 7, 2005

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. VAR 04-107

Applicant: KLAUS D. CONVENTZ

Owners: THOMAS J. BLAGBURN, ET AL.

**Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning**

Tax Map Key: 8-7-020:018, Lot 203

After reviewing your application and the information and plans submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 04-075 allows portions of the Dwelling/Carport's wall to remain on Lot 203, "AS-BUILT", with a minimum 14.1 feet front yard and attendant minimum 9.8 feet front yard clear space in lieu of the minimum 15 feet front yard and attendant minimum 10.0 feet front yard open space requirements from the TMK's front boundary line along Kaohe Road according to variance site plan map dated and signed on November 18, 2004. The variance request is from the TMK's minimum yard requirement pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and 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

1. **Location.** The subject property, Lot 203 containing 9123 square feet, is within Kona Paradise Subdivision, being a portion of MAHELE AWARD 25, and situated at Kaohe 4th, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about December 7, 2004. The applicant's variance application site plan map drawing, drawn to scale, was prepared by a surveyor and is dated and signed on November 18, 2004. The variance site plan map denotes the location of the dwelling and attached carport encroachment, "AS-BUILT", within the TMK property's minimum front yard and respective front yard open space requirements along Kaohe Road.

The applicant's background states in part:

"The 1-story single family dwelling with carport was built in 2002 under Building Permit No. 025090, which received final inspection.

There is another Building Permit on record and is still active (No. 925106). This permit was initiated by predecessor in the property, also for a dwelling. However, the Building Permit in 2002 replaced the 1992 permit. Owner will address the open permit to have it deleted from the County records.

Owners were unaware of any problems when a setback survey conducted November 11, 2004, by KKM-Surveys revealed the encroachment, while the property is in escrow currently."

3. **Agency Comments and Requirements-VAR 04-107:**

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

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

- b. The Department of Public Works (DPW) memorandum dated January 7, 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)"

Mr. Klaus D. Conventz
September 7, 2005
Page 3

The attached DPW memorandum dated December 26, 2004 states in part:

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

The minimum setbacks shall be maintained as follows:

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

Others: The building permit No. 925106 is not finalized.”

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 December 1, 2004 and December 20, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letters from surrounding property owners and/or public were received:
 - a. Objection letter from Alan R. Bebeau, Et al. received on or about December 8, 2004 .

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicants and copy(s) of building permits obtained from DPW, the original dwelling and carport encroachment issue was recently constructed in 2002. The applicant or current owners are trying to address the encroachment issue constructed by others. Building access and building options on this “corner” lot and the “lay of the land” throughout this particular subdivision-Kona Paradise is limited or unusual.

The construction of the original 1-story dwelling and attached carport improvements were constructed according to a building permit issued to previous owners. In addition to addressing the dwelling’s carport position, the applicant, on behalf of the current owner(s) will address the status of the outstanding building permit issued to the subject TMK property.

The site plan identifies the dwelling and attached carport garage encroachments within the property’s minimum yards pursuant to the Hawaii County Zoning Code. It appears that the dwelling and attached carport was constructed pursuant to a valid building permit and construction permits issued to the TMK property by the County. It appears that the building inspections of the premises, e.g. foundation, framing, etc. of the original dwelling constructed

Mr. Klaus D. Conventz
September 7, 2005
Page 4

pursuant to BP No. 025090 3 years ago did not disclose any building encroachment issues or building permit irregularities. The applicants or current owners are honestly trying to address the status of the 3-year old dwelling's carport position which received "final inspection" from the County-DPW.

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 the dwelling or modifying the attached carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property-Lot 203 with a portion of the privately owned (Kaohe Road) right-of-way fronting Lot 203 and resubdivision and adjustment of minimum yards from revised 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 existing dwelling or carport encroachment within the property's minimum front yards and attendant open spaces will not be physically and visually obtrusive from adjoining property(s) or rights-of-way. The building encroachments were revealed by and instrument survey and were discovered during escrow or submittal of the variance application. This corner building encroachment does not detract from the character of the surrounding neighborhood and land patterns. Therefore, it is felt that the existing 3-year old dwelling/carport encroachment within one of the front yard(s) of LOT 203 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 and objection letters received from surrounding property owners was necessary. The applicants 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. Portions of the existing 1-story dwelling/carport, "AS-BUILT", on "LOT 203" will not meet Chapter 25, the Zoning Code's minimum front yard and attendant minimum front yard open space requirements. The approval of this variance allows the existing dwelling/carport improvements to remain, "AS BUILT", to remain on Lot 203 pursuant to the variance site plan map.
4. The applicant or current owners shall address the status of the outstanding building permit-BP No. 925106 and/or other building construction permits issued in 1992 to subject TMK property by the DPW-Building Division (Kona) prior to future sale of the 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.

Mr. Klaus D. Conventz
September 7, 2005
Page 6

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: je
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cc: Real Property Tax Office-Kona
Planning Dept.-Kona
Allan R. Bebeau, Et al.