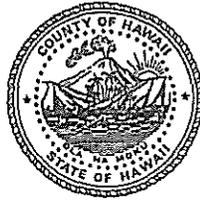


Harry Kim
Mayor



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

June 17, 2005

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (VAR 04-111)

Applicant: KLAUS D. CONVENTZ
Owners: STEPHEN C. TOLFREE III, ET AL.
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 2-8-025:027, Lot 27

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 04-111 allows portions of a dwelling to remain, "AS-BUILT", on subject TMK property, Lot 27, with a minimum 6.0 feet to minimum 7.0 feet side yard and attendant minimum 3.0 feet yard open spaces, respectively, in lieu of the minimum 8.0 feet side yard and attendant minimum 4.0 feet side yard open space requirements, according to the variance site plan map dated November 10, 2004. The variance request is from the subject TMK's minimum side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 27 consisting of 7657 square feet of Nanimalio Subdivision, and situated at Pepeekeo, South Hilo, Hawaii. The property's street address is 38-491 Ho'opiha Place.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated "Urban" by the State Land Use (SLU) Commission.

Hawaii County is an equal opportunity provider and employer.

JUN 20 2005

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about November 22, 2004. The applicant's variance application site plan or map drawing is drawn to scale and dated November 10, 2004. The variance application's site plan or survey map by Paul H. Murray & Associates, LLC denotes the building envelope, dwelling ("DWELLING") and other site improvements on "LOT 27".

Note: The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) located on "LOT 27". The location of any fencing and/or landscaping planting improvements near or along the property's boundary lines or straddling common boundary lines shall be addressed and resolved by the applicant/current owner(s).

3. **Agency Comments and Requirements-(VAR 04-111):**

- a. The Department of Public Works (DPW) memorandum dated December 16, 2004, states in part:

"We have reviewed the subject application forwarded by your memo dated December 13, 2004 and have the following comments.

Approval of the application shall be conditioned as noted below.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5ft. side and 5 ft. rear.

In the absence of a site plan for TMK 2-8-25:027, Lot 27, we are requiring that the minimum building code setback requirements are adhered to."

- b. The State Department of Health (DOH) memorandum dated December 24, 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 the first and second notice was mailed on November 22, 2004 and December 20, 2004, respectively, by the applicant.

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated November 10, 2004.

The applicant, on behalf of the current owners, filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling, carport, and other site improvements, "AS BUILT", on "LOT 27". A small portion of a dwelling's footprint and eaves are constructed beyond the denoted building set-back line or building envelope into the property's minimum side yard and attendant side yard opens space requirements pursuant to the Hawaii County Zoning Code. The current owners or applicant became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the 9 year old dwelling improvements were built circa 1996 according to the applicant and County building permit records. It appears that building inspections of the premises by the respective agencies during the construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities in 1996.

ALTERNATIVES

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

1. Removing the existing building and eave encroachments or redesigning or relocating the dwelling and portion of the deck to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property-LOT 26 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 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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It appears that small portions of the dwelling within a side yard and attendant side yard open space are not physically noticeable or visually obtrusive from adjacent property(s) or rights-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land pattern.

Therefore, it is felt that these building encroachments within the affected minimum yards 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 December 13, 2004. Additional time to consider agency comments and complete the variance background 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/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 a "DWELLING" on "LOT 27" will not meet Chapter 25, the Zoning Code's minimum side yard and attendant side yard open space requirements according to the variance application's site plan map dated November 10, 2004. The approval of this variance allows the dwelling improvements on "LOT 27" to remain, AS BUILT, on the subject TMK property or "LOT 27", pursuant to the variance site plan map.

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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-LOT 27, 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 subject tax map key property-Lot 27 are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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xc: Real Property Tax - Kona
Planning Department - Kona