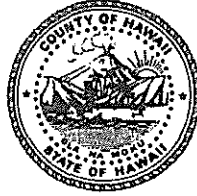


Harry Kim
Mayor



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

March 10, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (WH) VAR 04-113
Applicant: KLAUS D. CONVENTZ
Owners: MASAYUKI & FUJIE SATO
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-3-013:038, Lot 14

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 04-113 allows the carport/storage attached to the dwelling or "RESIDENCE" to remain, "AS-BUILT", on the subject TMK property or Lot 14, with a minimum 8.81 feet to minimum 9.11 feet side yard and attendant minimum 5.39 feet to minimum 5.79 feet side yard open space in lieu of the minimum 15.00 feet side yard and 10.00 feet minimum side yard open space requirement according to the variance application site plan map dated and signed on December 10, 2004. The variance request is from the subject TMK's minimum side yard and attendant side yard open space requirements pursuant to 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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1. **Location.** The subject property, Lot 14 consisting of 22, 727 square feet, is within a subdivision of portions of Lot C1 and B2, being a portion of Royal Patent 1663 and Land Commission Award 5524 Apana 5, to Lots 1 to 19 inclusive, and situated at Keei 2nd, South Kona, Hawaii. The TMK property's address is 83-1040 Mamalahoa Highway.

The property is zoned Agricultural (A-1a) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about December 16, 2004. The variance application's site plan map is drawn to scale and prepared by PATTISON LAND SURVEYING, INC. The variance site plan map, signed and dated "12/10/04", and survey report indicate portions of the "CARPORT" and enclosed storage area within the carport were built within a 15-foot side (West) yard of "LOT NO.14" or subject TMK property.

The applicant's background states in part:

"The dwelling with attached carport/storage area and porch/lanai received Building Permit No. 40973, issued February 10, 1969.

Owners were unaware of any problems until a setback survey, conducted December 10, 2004 by Pattison Land Surveying, INC. (sic) pending escrow procedure for conveyance, revealed the violations.

The encroachments are limited to the west wall of enclosed storage area and attendant open space for the entire carport."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of a "CRM Wall" and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building or tax records show the original Building Permit was issued circa 1969 according to the applicant.

4. **Agency Comments and Requirements-(WH) VAR 04-113:**

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- a. The Department of Public Works (DPW) memorandum dated January 19, 2005 states in part:

“We reviewed the subject application and have no comments on or objections to the variance.”

- b. The State Department of Health (DOH) memorandum dated February 2, 2005 states:

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

5. **Notice to Surrounding Property Owners.** Proof of sending 2-notices to surrounding property owners of all known surrounding property owner(s) within three hundred (300) of the boundary perimeter of subject TMK property by were received from the applicant. The notices were sent on December 15, 2004 and January 10, 2005, respectively, according to notarized affidavits in the variance file. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 12, 2005 according to the variance file.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within a minimum 15-foot side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the carport and storage room (within the carport) improvements, “AS BUILT”, on “LOT NO.14”. The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard.

According to the applicant and/or records available at the Kona-DPW-Building Division, it appears that the original dwelling improvements were constructed according to BP No. 40973, E29027, and P14065 issued to subject TMK property prior circa 1969 and 1970. It appears that the original 36 + year old open carport and storage room improvements within the affected side yard went unnoticed at that time.

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 dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 14 with an adjoining property (TMK: 8-3-013:040, Lot 16) and resubdivision to modify property lines or 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 subject building encroachments constructed approximately 36 + years ago within the minimum (front/rear/side) yard are not physically and/or visually obtrusive from the adjacent property ("LOT NO.16") or (public) right-of-way (Mamalahoa Highway). It appears that these 36 + year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected side yard identified on the variance application's site plan map and survey report will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated January 3, 2005 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and 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 the dwelling's carport-storage room within the carport located on "LOT NO. 14" will not meet the minimum 15 feet side (West) yard and attendant minimum 10 feet side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report dated December 10, 2004. The approval of this variance permits the "CARPORT" and associated storage room improvements within the affected side yard to remain, "AS BUILT", on the subject TMK property or "LOT NO.14" according to the variance site plan map and survey report dated December 10, 2004.

The applicant or current owners shall address the status of any active building or construction permits issued to subject TMK property by the DPW-Building Division (Kona). Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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 or new 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

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xc: Real Property Tax Office-Kona