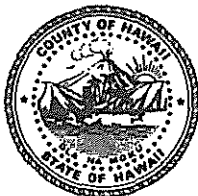


Harry Kim
Mayor



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 29, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (WH) VAR 05-037

Applicant: KLAUS D. CONVENTZ
Owner: VICTORIA J. SCOTT
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-6-022:089, Lot 7

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. 05-037 permits portions (corner) of a 2-story residence to remain, "AS-BUILT", with a minimum 7.74 feet to 10.00 feet side yard and attendant minimum 4.05 feet side yard open space in lieu of the minimum 10.00 feet side yard and 5.00 feet side yard open space requirements, according to the variance site plan map dated and signed on April 14, 2005. The variance is from the TMK property's minimum side yard and attendant side yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B), 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 7 containing 15,002 square feet, is within "KOMOHANA KAI, UNIT I", being a portion of Royal Patent No. 4475 Land Commission Award No. 7713, Apana 43 to V. Kamamalu, and situated at Holualoa 1st and 2nd, North Kona, Hawaii. The property's street address is 76-6359 Kupuna Street.

MAR 30 2006

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). This subject TMK property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about April 20, 2005 to the Kona Planning Department. 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 "4/14/05" by a surveyor denotes a corner of the dwelling and attendant corner of the dwelling's roof eave of the "2 STORY RESIDENCE" was constructed with a minimum 7.74 feet side yard and attendant minimum 4.05 feet side yard open space, respectively on "LOT NO. 7" or subject TMK property.

The applicant's background states in part:

"The dwelling was built under Building Permit Nos. 035138 and 026596 for the 2-story single family dwelling with lanai and 2-car garage by predecessor of the property.

Owner was unaware of any problems when a setback survey conducted April 14, 2005, by Pattison Land Survey, INC. (sic) revealed the encroachment, while the property is currently in escrow."

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 walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (025525 and 026596), Electrical Permit (E025714), and Mechanical (M025476 and M026126) or Plumbing Permits were issued to subject TMK property. County building records show the building permits and associated construction permits issued to the subject TMK property were "closed".

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
March 29, 2006

4. **Agency Comments and Requirements-(WH) VAR 05-037:**

- a. The State Department of Health (DOH) memorandum dated June 16, 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 June 14, 2005 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 statues pertaining to building construction, (see attached memorandum from our Building Division)."

The attached DPW memorandum dated June 13, 2005 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.

The minimum setbacks shall be maintained as follows:

Residential structures- 3ft. side, 3ft. rear

Commercial structures- 5 ft. side, 5 ft. rear

Others: The building permit No 915308 and 916019 were never finalized."

Note: County building records show the aforementioned permits "No 915308 and 916019" are issued to TMK: 7-7-021:001 not the subject TMK; and, "035138" cited in the applicant's background report is issued to TMK: 7-6-012:109 not the subject TMK).

- 5 **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on April 20, 2005 and June 13,

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
March 29, 2006

2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about June 13, 2005.

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 10 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling improvements and other site improvements, "AS BUILT", on "LOT 7". 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 and associated minimum side yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling during 2002, this portion or "corner" of the dwelling and roof eave within the affected side yard went unnoticed.

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 7 with adjoining lot (TMK: 7-6-022:90, Lot 8) 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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
March 29, 2006

It appears that the subject building encroachments constructed approximately 3+ years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 8) or right-of-way (Kupuna Street). It appears that these 3+ 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 and attendant side yard open yard space 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 June 3, 2005 and additional time to complete the variance background report and confirm 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:

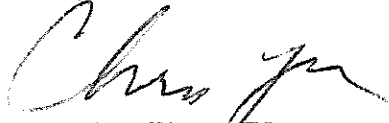
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 located on "LOT 7" will not meet the minimum side yard and attendant side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated April 14, 2005. The approval of this variance permits the "2-STORY RESIDENCE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 7" according to the variance site plan map dated April 14, 2005.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
March 29, 2006

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.

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:pak
P:\WP60\WRY\FORMLETT\VARAPP05-037TMK76022089.BC

xc: Real Property Tax Office-Kona