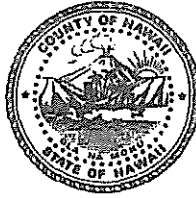


Harry Kim
Mayor



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

May 9, 2006

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT-VAR 05-046
Applicant: KLAUS D. CONVENTZ
Owners: WESLEY J. SUGAI, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum Yards
Tax Map Key: 7-6-022:069, Lot 125

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit-VAR 05-042 permits a corner of a "2-Story House" and attached "Deck" and "Hot Tub" improvements to remain on Lot 125, "AS-BUILT", with a minimum 18.4 feet front yard and minimum 8.0 feet to 9.2 feet front yard open space in lieu of the minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space requirements according to the variance site plan map dated May 10, 2005. The variance request is from the subject TMK property's minimum front yard and attendant front yard open space requirements pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A), 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 125 containing 15,129 square feet, is within Komohana Kai, Unit II, File Plan 1737, being a portion of R. P. 4475, L. C.

MAY 10 2006

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
May 9, 2006

Award 7713, Apana 43, to Victoria Kamamalu, and situated at Holualoa 1st and 2nd, North Kona, Hawaii. The property's address is 76-6359 Kololia Street.

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). The property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about May 16, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates. The variance site plan map, dated May 10, 2005, denotes portions of the "2-Story House", and attached "Deck", and "Hot Tub" were built within the property's minimum 20 feet front yard and minimum 14 feet front yard of subject TMK property or "LOT 125".

The applicant's background states in part:

"The dwelling was built in 1990 under Building Permit No. 895861 issued July 17, 1989 and received final inspection.

Owners were unaware of any problems when a setback survey, conducted by Wes Thomas Associates on May 10, 2005, revealed the encroachments, while the property is in escrow for conveyance."

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

3. **County Building Records:**

County building records show Building Permit-895861, Electrical Permit-E896099, and Mechanical-M895930 or Plumbing Permit were issued to subject TMK property. It appears that the "2-Story House" on "LOT 125" was built pursuant to these building and associated construction permits issued in 1989.

4 **Agency Comments and Requirements-VAR 05-046:**

- a. The Department of Public Works (DPW) memorandum dated June 14, 2005 states:

"We reviewed the subject application and have no comments or objections. Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3520."

In addition, a DPW-Building Division memorandum dated June 13, 2005 memorandum attached to the DPW June 14, 2005 memorandum states in part:

"We have no comments or objections to the application."

- b. 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."

- 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 May 16, 2005 and June 13, 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 front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling and other site improvements, "AS BUILT", on "LOT 125". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
May 9, 2006

or premeditation by the owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected minimum front yard and attendant minimum front yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1989 and 1990, the dwelling and associated building encroachments within the property's front yard (along Lako Street) 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 125 with adjoining adjoining Right-of-Way (Lako Street) 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 17 years ago within the minimum front yard are not physically and/or visually obtrusive from adjoining property(s) or right-of-way (Lako Street). It appears that these 17 year old building encroachments within the affected yards 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 front yard and attendant front yard open yard space of the subject property 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 June 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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
May 9, 2006

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

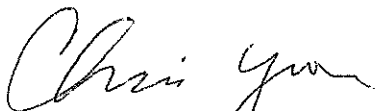
This variance request is approved subject to the following conditions:

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 2-story dwelling and attached deck/hot tub improvements, "AS BUILT" on "LOT 125" will not meet the minimum front yard and attendant minimum front yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 10, 2005. The approval of this variance permits the "Dwelling" and attached building improvements to remain, "AS BUILT", on the subject TMK property or "LOT 125" according to the variance site plan map dated May 10, 2005.
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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
May 9, 2006

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:mad
P:\WP60\WRY\FORMLETT\VAR05-046APPZCTMK76022069.BC

xc: Real Property Tax Office-Kona