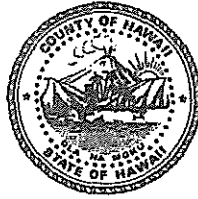


Harry Kim
Mayor



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 5, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 05-052

Applicant: KLAUS D. CONVENTZ
Owners: MARK D. AYERS, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-6-020:046, Lot 46

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 05-052 allows portions of a 1-story dwelling/lanai and carport to remain on Lot 46, "AS-BUILT", with a minimum 7.56 feet to 7.66 feet side yard and attendant minimum 3.97 feet side yard open space and minimum 9.23 feet rear yard open space and carport with minimum 7.82 feet to 7.99 feet side yard, respectively, in lieu of the minimum 8.00 feet side yard and attendant minimum 4.00 feet side yard open space and minimum 10.00 feet rear yard open space requirements according to the variance site plan map dated July 3, 2002. The variance request is from the subject TMK property's minimum yards and associated minimum open space requirements pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a). Chapter 25, Zoning, Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

MAY 10 2006

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
May 5, 2006

1. **Location.** The subject TMK property, Lot 46 containing 8212 square feet, is within Kilohana Subdivision, Unit 1-A, File Plan 1304, and situated at Holualoa 1st and 2nd, North Kona, Hawaii. The property's street address is 76-6260 Koko Olua Place.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC). The subject TMK property was created by SUB 3194 on November 29, 1972. 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 31, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and was prepared by Cassera and Christiscu. The variance site plan map, dated July 3, 2002, denotes portions of the "SINGLE STORY DWELLING" and "CARPORT" were built within minimum side and rear yard(s) of the subject TMK property or "LOT 46".

The applicant's background states in part:

"The residence was built in 1981 under Building Permit No. 04645 with an addition under Building Permit No. 986411, both issued December 1, 1980.

Owners were unaware of any problems, when a survey conducted by Richard H. Cassera, Land Surveyor, revealed the encroachments on July 26, 2002, while the property was 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 rock walls, retaining walls, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (K04645, 986411), 1-Electrical Permit (EK04135), and Mechanical (MK03787) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and other building improvements on "LOT 46" were built pursuant to these building and associated construction permits issued circa 1980 and 1998.

4 **Agency Comments and Requirements-VAR 05-052:**

- a. The Department of Public Works (DPW) memorandum dated September 2, 2005 states in part:

“Buildings shall conform to all requirements of code and statues pertaining to building construction, (see attached memorandum from our Building Division). Note: No Building Division memorandum was attached to the DPW memorandum. Refer to Variance Conditions.

- b. The State Department of Health (DOH) memorandum dated September 13, 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 31, 2005 and August 16, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 18, 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 the property’s minimum yards and attendant minimum open yard spaces. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling, carport, and other site improvements, “AS BUILT”, on “LOT 46”. 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 property’s minimum side and rear yard(s).

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 2-building permits and other associated construction permits issued to subject TMK property.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
May 5, 2006

It appears that during construction of the building improvements circa 1980 and 1998, the building encroachment within the property's affected minimum side yards, minimum rear yard, and attendant minimum open yard spaces 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 46 with adjoining lots (TMK: 7-6-020:045, Lot 45, TMK: 7-6-020:047, Lot 47, TMK: 7-6-020:083, Lot 83) 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 8 to 25+ years ago within the minimum side and minimum rear yards are not physically and/or visually obtrusive from the adjoining property(s) or right-of-way (Koko Olua Place). It appears that these 25 +/- 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 minimum yards and attendant open yard spaces 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 August 11, 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 located on "LOT 46" will not meet the minimum side, minimum rear yard and attendant side and rear yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated July 3, 2002. The approval of this variance permits the dwelling and carport improvements to remain, "AS BUILT", on the subject TMK property or "LOT 46" according to the variance site plan map dated July 3, 2002.

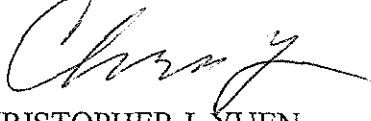
The applicant or current owners shall address the status of the "open" electrical permit (EK04135) and mechanical permit (MK03787) issued to subject TMK property. These active or "open" construction permits issued to subject TMK property shall be closed or "finalized" by the DPW-Building (Kona) Division on or before July 31, 2006 and 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.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
May 5, 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:cd
P:\WP60\WRY\FORMLETT\VARNO05-052ZCSETBACKTMK76020046.BC

xc: Real Property Tax Office-Kona