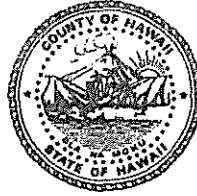


Harry Kim
Mayor



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 05-068
Applicant: KLAUS D. CONVENTZ
Owners: DANIEL B. HARRISON, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-016:001, Lot 59

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 05-068 allows portions of a 2-story dwelling to remain on Lot 59, "AS-BUILT", with a minimum 13.3 feet front yard and attendant minimum 9.9 feet front yard open space and minimum 3.8 feet side yard open space in lieu of the minimum 15.00 feet front yard and attendant minimum 10.00 feet front yard open space requirement and minimum 4.00 feet side yard open space requirement, according to the variance site plan map dated and signed on July 17, 2005. The variance is from the TMK property's minimum yard and attendant open yard 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

1. **Location.** The subject property, Lot 59 containing 7501 square feet, of Kona Wonderview Lots, File Plan 765, is situated at Kalaoa 2nd, North Kona, Hawaii. The property's street address is 73-1090 Loloa Street.

MAY 10 2006

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

The property is zoned Agricultural (A-5a) by the County and designated Urban or "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 July 18, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS, and, is signed and dated July 17, 2005. The map denotes portions of the "Dwelling" were built into the property's minimum 20 feet front yard and minimum 10 feet side yard of "LOT 59" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1975 under Building Permit No. K01560, issued December 3, 1975, with final inspection on January 1, 1979.

Building Permits for additions were issued under Nos. K01644, K02027, K0002524, K02644 and 935358 between 1976 and 1993.

Owners were unaware of any problems when a setback survey, conducted by KKM-Surveys on July 15 (sic), 2005 revealed the encroachments."

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, wood fence, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 6-Building Permits (K01560, K01644, K02027, K02524, K02644, and 935358), 3-Electrical Permits (EK01167, EK01340, and E015905), and 3-Mechanical (MK01054, MK01074, and MK01112) or Plumbing Permits were issued to subject TMK property. It appears that the "Dwelling" identified on the variance site plan map was built pursuant to these building and associated construction permits issued between 1975 and 1993.

4. **Agency Comments and Requirements-VAR 05-068:**

- a. The Department of Public Works (DPW) memorandum dated September

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
May 9, 2006

8, 2005 states:

“Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).”

Note: Pursuant to an April 11, 2006 discussion between staff and the Kona DPW-Building Division, “no comments” were sent.

- b. The State Department of Health (DOH) memorandum dated September 15, 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 July 18, 2005 and August 29, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about August 26, 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 and side yards and/or attendant minimum open yard space. The variance application’s site plan map was prepared by a surveyor and denotes the location of the “Dwelling” and other site improvements, “AS BUILT”, on “LOT 59”. The current owners became aware of building encroachment issues “after they purchased the property”. 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 minimum yards.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 6-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements within the property’s minimum front yard and attendant minimum front and side yard open space went

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

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 59 with the right-of-way or adjoining lot (TMK: 7-3-016:002, Lot 60) 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 30 years ago within the minimum front yard and side yard and attendant open yard spaces are not physically and/or visually obtrusive from the adjacent property (Lot 60) or rights-of-way (Loloa Drive and Kauwila Street). It appears that these 30 + 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 yards and attendant open yard space 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 August 23, 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.

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

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 59" will not meet the minimum front yard and attendant minimum front and minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "Dwelling" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 59" according to the variance site plan map and survey report dated July 17, 2005.

The applicant or current owners shall address the status of the following "open" building permit(s) and associated mechanical permit: K02027 and K02524 and MK01054 issued to subject TMK property by the DPW-Building Division (Kona). These "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to June 30, 2006 or 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 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

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xc: Real Property Tax Office-Kona