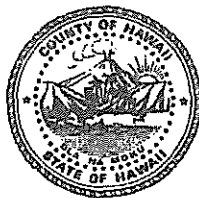


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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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 05-070

Applicant: KLAUS D. CONVENTZ
Owners: ETHEL M. GREENFIELD TRUST
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-5-031:064, Lot 27

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 05-070 allows portions of a 1-story dwelling/carport/lanai to remain on Lot 27, "AS-BUILT", with a minimum 8.49 feet to minimum 10.59 feet front yard and attendant minimum 5.57 feet to minimum 8.21 feet front yard open space in lieu of the minimum 15.00 feet front yard and attendant minimum 10.00 feet side yard open space requirements according to the variance site plan map dated and signed on June 20, 2005. 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)(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 46 containing 7720 square feet, within Kona Hillcrest Subdivision, File Plan 1124, is situated at Waiaha 2nd, North Kona, Hawaii. The property's street address is 75-267 Pumehana Street.

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

The property is zoned Single-Family Residential (RS-7.5) 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 Pattison Land Surveying, Inc. The variance site plan map, dated June 20, 2005, denotes portions of the single story dwelling and attached lanai/open carport" were built within the property's minimum 15.00 front yard(s) of the subject TMK property or "LOT NO. 27".

The applicant's background states in part:

"The dwelling was built in 1971 under Building Permit Nos. 48061, 03716, 04289, and 363, issued April 3, 1973, and April 15, 1971, respectively.

Owner's contingent/successor trustee was unaware of any problems when a setback survey, conducted by Thomas Pattison, on June 20, 2005 revealed the encroachments, while the property is subject to escrow procedure for conveyance/disposal of property of Ethel M. Greenfield (deceased) Trust."

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

3. **County Building Records:**

According to the applicant, "The dwelling was built in 1971 under Building Permit Nos. 48061, 03716, 04289, and 363, issued April 3, 1973, and April 15, 1971, (sic) respectively." Recent County building records show a Building Permit (K04289), and Mechanical (MK033377) or Plumbing Permit were issued to subject TMK property in 1980. Pursuant to the applicant's background report and current building records, the original dwelling or building improvements on "LOT NO. 27" were built between 1971 and 1980s.

4. **Agency Comments and Requirements-VAR 05-070:**

- a. The Department of Public Works (DPW) memorandum dated September 8, 2005 states in part:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
May 5, 2006

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

Note: The referenced attached memorandum from Building Division was not attached to the DPW memorandum. Refer to variance conditions.

- 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 the property’s minimum front yard(s) and attendant minimum front yard open yard space. The variance application’s site plan map was prepared by a surveyor and denotes the location of the 1-story dwelling/lanai/open carport and other site improvements, “AS BUILT”, on “LOT NO. 27”. 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 front yard(s).

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 1-building permit and construction permit issued to subject TMK property. It appears that during construction of the original dwelling between 1971 and 1980s, the building encroachments within the property’s minimum front yards went unnoticed.

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

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 27 with the Rights-of-Way fronting Lot 27 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 original dwelling or building encroachments constructed approximately 35 +/- years ago within the minimum front yard(s) are not physically and/or visually obtrusive from the adjacent property or rights-of-way. It appears that these 35 +/- year old building encroachments within the property's affected minimum front yard(s) 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 within the property's minimum front yard(s) and attendant minimum front yard open 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 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.

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 single-story dwelling and attached lanai/open carport located on "LOT NO. 27" will not meet the minimum (front/rear/side) yard (open space) pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map June 20, 2005. The approval of this variance permits the "SINGLE STORY RESIDENCE" and attached "SCREENED PORCH/OPEN CARPORT" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 27" according to the variance site plan map dated June 20, 2005.

The applicant or current owners shall address the status of Mechanical Permit-MK03377 issued to subject TMK property. This active or "open" construction permit issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division (Kona) 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.

CRM Wall(s) into the County Rights-of-Way. The variance site plan map dated June 20, 2005 denotes portions of CRM wall(s) are built within "County Road". The applicant or current owners shall remove CRM wall(s) constructed into the County owned Rights-of-Way (Pumehana Street and/or Oni Oni Street) prior to sale of the property or transfer of title of the property by the current owner 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

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xc: Real Property Tax Office-Kona