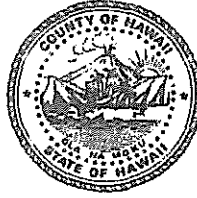


Harry Kim
Mayor



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 12, 2006

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT-VAR 05-102
Applicant: KLAUS D. CONVENTZ
Owners: DANIEL VERN MAACK, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-1-015:010, Lot 4-G-12

After reviewing your application and the information submitted, the Planning Director certifies Variance Permit-VAR 05-102 subject to conditions. The variance permits portions of a 1-story dwelling/carport-storage to remain on Lot 4-G-12, "AS-BUILT", with a minimum 18.5 feet front yard and attendant minimum 3.5 feet front yard open space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet side yard open space requirements, according to the variance site plan map signed and dated November 11, 2005. The variance is from the TMK property's minimum front yard and attendant front 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)(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 4-G-12 containing 14,467 square feet, being a portion of Royal Patent 1584 to Daniel Barrett, is situated at Keopuka, South Kona. The property's street address is 81-939 Keopuka Road.

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The property is zoned Single-Family Residential (RS-10) 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 November 18, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated November 15, 2005, denotes portions of the "Dwelling/Carport" were built into minimum 20 feet front yard and attendant minimum 14 feet front yard open space of subject TMK property or "LOT 4-G-12".

The applicant's background states in part:

"The dwelling was built in 1972 under Building Permit No. 48128 issued April 23, 1971 according to the Department of Taxation's Property Tax Office's Residential Appraisal Card, with the carport addition built under Building Permit No. 01862, issued May 19, 1976.

Owners were unaware of any problems when a setback survey conducted by KKM-Surveys on November 15, 2005, revealed the encroachments, while the property was subject to appraisal for financing."

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, paved driveways, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (H48128, K01862), 1-Electrical Permit (EH34066), and 1-Mechanical (MH16558) or Plumbing Permit were issued to subject TMK property. It appears that the 1-story dwelling and carport addition on "LOT 4-G-12" were built pursuant to these building and associated construction permits issued in 1971 and 1976.

4. **Agency Comments and Requirements-VAR 05-102:**

- a. The Department of Public Works (DPW) memorandum dated April 5, 2006 states in part:

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“We reviewed the subject application and have no comments or objections.”

- b. The State Department of Health (DOH) memorandum dated April 4, 2006 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 November 21, 2005 and March 17, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 2006.
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 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 “Dwelling/Storage/Carport” and other site improvements, “AS BUILT”, on “LOT 4-G-12”. The current owners became aware of building encroachment issues after the survey map was prepared for appraisal/refinancing. 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 front yard.

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. It appears that during construction of the dwelling and carport improvements between 1971 and 1976, the dwelling encroachment within the property’s front yard and attendant front yard open space went unnoticed.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments

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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 4-G-12 with adjoining road (Easement) lot (TMK: 8-1-015:009) 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 dwelling/carport encroachments constructed approximately 30 + years ago within the property's minimum front yard and attendant minimum front yard open space are not and/or visually obtrusive from the adjacent property (Lot 4-G-11) or privately owned road-easement right-of-way (10-foot wide). 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 front yard and attendant 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 March 10, 2006 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 to May 15, 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.

Mr. Klaus D. Conventz
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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/carport located on "LOT 4-G-12" will not meet the minimum front yard and attendant minimum front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated November 15, 2005. The approval of this variance permits the "Dwelling/Carport" improvements to remain on "LOT 4-G-12", "AS BUILT", according to the variance site plan map dated November 15, 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.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

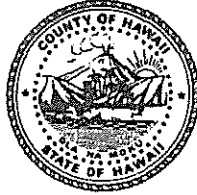


CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-Kona

Harry Kim
Mayor



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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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July 28, 2006

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT-VAR 05-102 (Correction)
Applicant: KLAUS D. CONVENTZ
Owners: DANIEL VERN MAACK, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-1-015:010, Lot 4-G-12

Pursuant to your recent discussion with staff, page 1, first paragraph or a portion of line 5 of variance permit letter dated May 12, 2006 which reads "minimum 14.00 feet side yard" is hereby corrected to read "minimum 14.00 feet front yard" or line 5 should be corrected to read as follows:

"yard and minimum 14.00 feet front yard open space requirements, according to the variance site"

We apologize for the typographical error and your understanding in this matter.

Sincerely,

CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-Kona