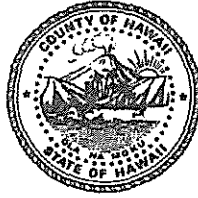


Harry Kim
Mayor



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 11, 2006

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT-VAR 05-113
Applicant: KLAUS D. CONVENTZ
Owners: JON E. DOHERTY, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 7-8-021:097, Lot 9

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 05-113 permits portions of the dwelling's swimming pool deck to remain on Lot 9, "AS-BUILT", with a minimum 4.35 feet to 4.5 feet side yard open space, according to the variance site plan map dated and signed December 14, 2005. The variance is from the TMK property's minimum 5.0 feet side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, 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, containing 28,590 square feet, is Lot 9 of Keauhou Estates, 2nd. Increment, File Plan 1909, being a portion of Royal Patent No. 6856 and Land Commission Award 7713, Apana 6 to V. Kamamalu, and situated at Kahaluu & Keauhou 1, North Kona, Hawaii. The property's street address is 78-6957 Kia'aina 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

MAY 19 2006

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 December 21, 2005 to the Kona Planning Department. The variance application's site plan map was prepared by Pattison Land Surveying and drawn to scale. The variance site plan map is signed and dated December 14, 2005 and denotes portions of the dwelling's "DECK(wood)" are built into a minimum 5-foot side yard open space of the subject TMK property "LOT NO. 9".

The applicant's background states in part:

"Owners were unaware of any problems when a setback survey conducted by Pattison Land Surveying, INC. (sic) on December 14, 2005, revealed the encroachments, while the property is subject to escrow procedure for conveyance.

Unfortunately it is widely misunderstood or misinterpreted even by designers and contractors what constitutes an inground pool, an above ground pool, and how attached decks relate to setbacks and/or projection."

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

3. **County Building Records:**

County building records show 2-Building Permits (885814, 895898), 3-Electrical Permits (E896239, E905651, E915699), and 2-Mechanical (M905231, M915618) or Plumbing Permits were issued to subject TMK property. It appears that the dwelling and swimming pool on "LOT NO. 9" were constructed pursuant to these building and associated construction permits issued between 1989 and 1991.

4. **Agency Comments and Requirements-VAR 05-113:**

- a. The Department of Public Works (DPW) memorandum dated March 17, 2006 states in part:

1. Buildings shall conform to all requirements of code statutes

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
May 11, 2006

pertaining to building construction, (see attached memorandum from our Building Division).”

The attached Building Division memorandum dated March 14, 2006 states in part:

“We oppose the approval of the application for the reasons noted below.”

Others: Building Permit 895898 was never finalized.” (Refer to Variance Conditions).

- 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 December 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’s deck encroachments into a minimum side yard open yard space. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling, pool, and other site improvements on “LOT NO. 9”, “AS BUILT”. The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard open space.

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

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
May 11, 2006

subject TMK property. During escrow to sell the property the deck position within the affected yard was discovered.

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 9 with adjoining lot (TMK: 7-8-021:096, Lot 8) 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 deck encroachments into the property's minimum side yard open space are not physically and/or visually obtrusive from the adjacent property (Lot 8) or right-of-way (Kia'aina Street). It appears that the wooden deck's position within the property's minimum side yard open space will not depreciate or detract from the character of the surrounding residential neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the portions of the wooden deck within the affected side 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.

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 11, 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's wooden deck located on "LOT NO. 9" will not meet the minimum 5 feet side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 14, 2005. The approval of this variance permits the "DECK(wood)" improvements to remain on "LOT NO. 9", "AS BUILT", according to the variance site plan map dated December 14, 2005.

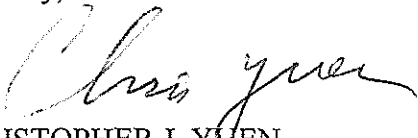
The applicant or current owners shall address the status of Building Permit-BP No. 895898 issued to subject TMK property by the DPW-Building Division. The "open" building permit (895898) and/or other building and/or construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division before or on October 31, 2006 or prior to the 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 11, 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\VARNO05-113ZCSETBACKTMK78021097.BC

xc: Real Property Tax Office-Kona