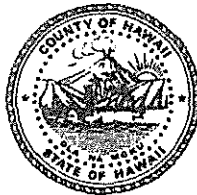


Harry Kim
Mayor



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

June 27, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-001

Applicant: KLAUS D. CONVENTZ
Owners: ALLEN N. DANIELS, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-3-013:005, Lot 5

After reviewing your variance application, the Planning Director certifies the approval of your Variance Permit-VAR 06-001 subject to variance conditions. The variance permits portions of a "Dwelling" and attached carport/lanai to remain on a proposed lot (LOT 5-A), "AS-BUILT", with a minimum 7.3 feet side yard in lieu of a minimum 8.00 feet required from a proposed boundary line according to the variance site plan map signed and dated August 27, 2005. The variance is from the proposed lot's minimum 8.00 feet side yard required by the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77 Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 5 currently containing 7700 square feet or proposed "LOT 5-A" (7699 square feet), is part of proposed consolidation/resubdivision of Lot 5 and Lot 6, situated in Kona Wonderview Lots, File Plan 765, being portion of Grant 3027 to Helieu, and situated at Kalaoa 2nd, North Kona, Hawaii. The property's street address is 73-1232 Loloe Drive.

The property is zoned Agricultural (A-5a) by the County and designated Urban or "U" by the Land Use Commission (LUC).

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
June 27, 2006

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about January 13, 2006 to the Kona Planning Department. The variance application's site plan map(s) are drawn to scale and prepared by KKM SURVEYS. The variance site plan map(s) are signed and dated June 20, 2003 and August 27, 2005, respectively. The first variance site plan map (showing existing conditions) indicates the "Dwelling" was built within the property's (LOT 5) side yard and adjoining property (LOT 6). The second variance site plan map, signed and dated on August 27, 2003, denotes portions of the "Dwelling" were built within a minimum 8 feet side of "LOT 5-A" (proposed lot) containing "7,699 Sq. Ft."

Page 1: "The dwelling received Building Permit No. 47528 on March 2, 1971, under predecessor in ownership.

The current owners were unaware of any problem, until a survey, conducted by KKM-Surveys on June 20, 2003, revealed that the residence had been completely mis-staked, with an encroachment up to 5.4 ft. (eaves) and up to 2.4 ft. at the wall-line into the neighbor lot No. 6 being TMK (3) 7-3-13:6. This property is owned by Magdalena C. Vilorio Revocable Trust, received by Transfer Deed dated June 26, 2000, recorded in said Bureau as Document No. 00-087145.

The survey by KKM-Surveys is enclosed for your review."

Page 1-2: "KKM-Surveys also discussed the problems with your staff at the Kona Office and was advised that both consultants, KKM-Surveys (for consolidation/resubdivision), and Baumeister Consulting (for variance from setback regulation under Chapter 25 County Code), concurrently file their respective application with the Planning Department.

For your review, I have enclosed the proposed draft for resubdivision of the lots, which still leaves a miniscule encroachment into the setback of 0.7 ft. (or 8.4"), however limited to the extreme Northeast corner of the dwelling, while no other structural elements would be effected."

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

3. **County Building Records:**

County building records show 1-Building Permit (H47528), 1-Electrical Permit (EH33672), and 1-Mechanical (MH16307) or Plumbing Permit were issued to subject TMK property circa 1971. It appears that the dwelling improvements on "LOT 5" and dwelling encroachments into an adjoining property (TMK: 7-3-013:006, Lot 6) were built pursuant to these building and associated construction permits issued in 1971. County records indicate that the building permit and associated electrical and plumbing permits were closed or "finaled" in 1971.

4 **Agency Comments and Requirements-VAR 06-001:**

- a. The State Department of Health (DOH) memorandum dated March 23, 2006 states:

"Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of all existing wastewater systems."

- b. The Department of Public Works (DPW) memorandum dated April 10, 2006 states in part:

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

- 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 January 13, 2006 and March 24, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 3, 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

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
June 27, 2006

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling's position on the subject TMK property and encroachments into the adjoining TMK property. 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 5" and "LOT 6". The current owners became aware of building encroachment issues in 2003 after purchasing the property in 2001. 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 yards of Lot 5 and Lot 6.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements in 1971, the dwelling encroachment within the property's side yard and encroachments into the adjoining property 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 5 with adjoining lot (TMK: 7-3-013:005, Lot 6) 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 within Lot 5 and Lot 6 were constructed approximately 35 years ago within the affected yards. It appears that these 35 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. The current land owners of Lot 5 and adjoining property-Lot 6 have agreed to move a common side boundary lines or change the metes and bounds of Lot 5 and Lot 6 to address the dwelling's position and adjust minimum yards. Therefore, it is felt that these building encroachments into the proposed side yard(s) identified on the second variance application's site plan map (proposed consolidation map) will not detract from the character of the immediate neighborhood or the subdivision.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
June 27, 2006

The subject variance application was acknowledged by letter dated March 17, 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.

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 5" will not meet the minimum side yard and side yard open space pursuant to Chapter 25, the Zoning Code, according to a site plan map signed and dated June 20, 2003. The approval of this variance permits a proposed consolidation/resubdivision of TMK: 7-3-013:005, Lot 5 and TMK: 7-3-013:006, Lot 6 and allows the "Dwelling" position denoted on proposed lot "LOT 5-A" according to a variance site plan map signed and dated August 27, 2003.

The proposed consolidation/resubdivision of the subject TMK property, Lot 5 and adjoining TMK property Lot 6 are subject to the requirements of Chapter 23, Subdivisions.

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 (LOT 5 or proposed LOT 5-A), subject to provisions of the Zoning Code or State Law which may change from time to time.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
June 27, 2006

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

WRY:cd
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xc: Real Property Tax Office-Kona