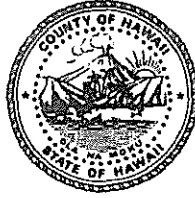


Harry Kim
Mayor



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

September 22, 2006

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

Dear Mr. Conventz:

VARIANCE-VAR 06-058

Applicant: KLAUS D. CONVENTZ
Owners: RICHARD T. BELL, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 7-5-031:054, Lot 17

After reviewing your application, the Planning Director certifies the approval of variance-VAR 06-058 subject to variance conditions. The variance permits portions of a 1-story dwelling/carport to remain on Lot 17, "AS-BUILT", with a minimum 10.9 feet to minimum 13.9 feet front yard and attendant minimum 7.6 feet to minimum 11.7 feet front yard open space in lieu of minimum 15.0 feet front yard and minimum 10.0 feet front yard open space requirements, according to the variance site plan map dated and signed July 10, 2006. The "Shed" within a side (northerly) yard and portion of the carport's metal roof eave will be abbreviated and removed according to the applicant. 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)(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 17 containing 7765 square feet, is within Kona Hillcrest Subdivision, File Plan 1124, and situated at Waiaha 2nd, North Kona, Hawaii. The TMK property's street address is 75-247 Pumehana Street.

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 24, 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, dated July 10, 2006, denotes portions of the "Dwelling-Carport" were built within a minimum 15 feet front yard of "LOT 17" or subject TMK property.

The applicant's background dated July 22, 2006 states in part:

Page 1. "The dwelling was built in 1971 under Building Permit No. 45110, issued June 23, 1970 with subsequent addition under Building Permit No. 021311, issued September 6, 2002.

Court appointed Personal Representative Mr. Bell was unaware of any problems until a setback survey conducted July 10, 2006 by KKM-Surveys revealed the encroachments while the property is subject to escrow procedure for conveyance.

In this particular situation it is difficult to determine the cause of the misplacement of the footprint."

Page 2. "It appears that the unknown contractor committed an honest staking error. Needless to say, the vast majority of designers and contractors, shortly after the Zoning Ordinance took effect, were unaware and uninformed about the relevance of setback regulations, in particular the rule of corner lots with 2 fronts and no rear yard.

However, undersigned advised the Estate's representative and Mr. Bell agrees, to permanently remove the smaller shed closest to the northerly boundary; also the metal roofing along the easterly edge of the carport projects at its southerly end 20 in. East, while the northerly connection to the dwelling is only 7 in. projecting East beyond the fascia board. This is not only unattractive, it's also unsafe in high wind conditions. Therefore, undersigned advised, and consent was reached that the metal roofing will be cut back by 12 in. in triangular fashion, commencing at the Southeast roof edge. This is also why the open space of the carport roof overhang will be enlarged from 6.6 ft. certified by the surveyor, to 7.6 ft. as suggested by undersigned."

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

3. **County Building Records:**

County building records show 1-Building Permit (021311), 1-Electrical Permit (E021026), and 1-Mechanical (M021001) or Plumbing Permit were issued to subject TMK property. It appears that the "Dwelling"(attached "Shed"/Carport" on "LOT 17" was built pursuant to these building and associated construction permits issued between 1971 and 2002.

4 **Agency Comments and Requirements-VAR 06-058:**

- a. The Department of Public Works (DPW) memorandum(s) dated August 15, 2006 state in part:

"We reviewed the subject application and our comments are as follows:

BUILDING

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

ROADWAYS

1. The driveway in the street corner return does not comply with Chapter 22 and shall be removed. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code and County standard details R-37 and R-38.
2. The applicant shall remove any encroachments or obstructions within the County right-of-way."

The attached DPW memorandum dated August 15, 2006 states in part:

"We oppose the approval of the application for the reasons noted below.

Others: ELECTRICAL PERMIT E021026 AND BUILDING PERMIT 021311 WERE NEVER FINALED (sic)"

- b. The State Department of Health (DOH) memorandum dated August 16, 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 July 24, 2006 and August 4, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 4, 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-carport encroachments within the minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling-carport, shed(s) and other site improvements, "AS BUILT", on "LOT 11". The current owners became aware of building encroachment issues during proceedings to address family affairs or probate. 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 were constructed according to building permits and other associated construction permits issued to subject TMK property nearly 25 years ago. It appears that the 25 year old dwelling-carport encroachment within the property's affected front yard 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-carport to fit within the correct building envelope prescribed by the Zoning Code. Pursuant to the applicant's background report, the smaller "Shed and Eave" encroaching into the property's (north) side yard will be removed. (Refer to variance conditions).
2. Consolidation of Lot 11 with adjoining right-of-way 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 were constructed approximately 25 years ago within the minimum front yard; and are not physically and/or visually obtrusive from the rights-of-way. It appears that these 25 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 and cosmetic correction to the carport eave within the affected front and attendant front yard open yard space identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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/Carport" located on "LOT 17" will not meet the minimum front yard and attendant minimum front yard open space requirement (along Lelehuna Street) pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated and signed July 10, 2006. The approval of this variance permits the "Dwelling" and attached "Carport" or "metal roofing" improvements to be modified in accordance with the applicant's background report and remain, "AS-BUILT", on the subject TMK property or "LOT 17" according to the variance site plan map.

The applicant or current owners shall address the status of Building Permit-BP No. 021311 and Electrical Permit E021026 issued to subject TMK property by the DPW-Building Division (Kona). This active or "open" building permit and electrical permit issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before December 31, 2006 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.

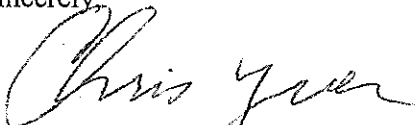
In addition, the applicant or owner(s) shall confer with the DPW to address and/or correct the driveway access to the property. The applicant or owners shall contact the DPW to identify what encroachments or obstruction within the County owned rights-of-way should be removed.

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
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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 L. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-Kona