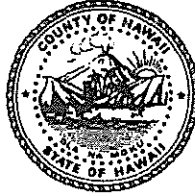


Harry Kim
Mayor



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
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October 16, 2006

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

Dear Mr. Conventz:

VARIANCE-VAR 06-071

Applicant: KLAUS D. CONVENTZ
Owners: TIMOTHY J. WATSON, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-7-017:062, Lot 2

After reviewing your variance application, the Planning Director certifies the approval of Variance-06-071 subject to variance conditions. The variance to allow portions of a "SINGLE STORY DWELLING" or "1-story single family dwelling with garage" to remain on Lot 2, "AS-BUILT", with minimum 12.81 feet front yard and attendant minimum 9.83 feet front yard open space in lieu of minimum 15.00 feet front yard and minimum 10.00 feet front yard open space according to the variance application's site plan map dated January 22, 2000. The variance is from the TMK property's minimum front yard and attendant minimum front yard open space required by 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 TMK property, Lot 2 containing 9206 square feet of "KONA WHITE SANDS BEACH ESTATES, UNIT II", according to File Plan 1480, is situated at Laaloa 1st and 2nd and Kapalaalaea 1st, North Kona, Hawaii. The subject property's street address is 77-6562 Naniloa 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). The property is within the Special Management Area (SMA). However, 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 August 28, 2006. The variance application's site plan map is drawn to scale and prepared by Cassera and Christescu. The variance site plan map dated January 22, 2000 denotes portions of the "SINGLE STORY DWELLING-GARAGE" is within the property's minimum 15 feet front yard (Nanihoa Drive) of "LOT 2" or subject TMK property along .

The applicant's background report dated August 21, 2006 states in part:

"The dwelling was built by predecessor under Building Permit No. 782548, issued October 3, 1978, with Permit No. 038343 for swimming pool issued September 19, 1979, and alterations and AC-unit under Building Permit No. 906218 and 906333, both in 1990.

The owners were unaware of any problem until a survey, conducted by Richard Cassera on January 22, 2000, revealed the encroachments shortly before close of escrow at the time.

It appears that the predecessor's contractor committed an honest staking error; no malice and intent could be substantiated during undersigned's site inspection, nor would owner or his contractor have benefited from such violation in any way."

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

3. **County Building Records:**

County building and real property tax records show 4-Building Permits (782548, 038343, 906218, 906333), Electrical Permit (E901921), and Mechanical (M906275) or Plumbing Permit were issued to subject TMK property. It appears that the 1-story dwelling-garage on "LOT 2" was built pursuant to these building and associated construction permits issued between 1978 and 1990.

4 **Agency Comments and Requirements-VAR 06-071:**

- a. The Department of Public Works (DPW) memorandum dated September 15, 2006 states in part:

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

1. Building shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. The plantings in the Laaloa Street right-of-way and in the area defined by Hawaii County Code (HCC) Section 22-2.2(a), obscure the sight distance at the intersection of Queen Kalama Avenue and Naniloa Drive. The applicant shall remove encroachments or obstructions within Queen Kalama Avenue right-of-way and maintain a maximum 3 foot height above the road. In the restricted sight distance area, within the subject property, as described in HCC Section 22-2.2 (a), meeting with the approval of the Department of Public Works.”

The attached DPW memorandum dated September 14, 2006 states in part the following:

“We opposed the approval of the application for the reasons noted below.

The building permit for the subject dwelling was never finalized.

Others: Building Permits 906218 and 906333 are still active.”

- b. The State Department of Health (DOH) memorandum is dated September 26, 2006. (Refer to memorandum in variance file).

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 August 22, 2006 and September 18, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 17, 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 into the property's minimum front yard along Naniloa Drive.

The variance application's site plan map was prepared by a surveyor and denotes the location of the 1-story dwelling-garage and other site improvements, "AS BUILT", on "LOT 2". 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 affected front yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 4-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1978 and 1990, the dwelling encroachment within the property's minimum front yard along Naniloa Drive 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-garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 2 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 constructed approximately 28 years ago within the minimum front yard are not physically and/or visually obtrusive from the adjacent property or right-of-way (Naniloa Drive) fronting the property. It appears that these 28 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected front yard 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 1-story dwelling-garage located on "LOT 2" will not meet the property's minimum front yard along Naniloa Drive pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated January 22, 2000. The approval of this variance permits the "SINGLE STORY DWELLING-GARAGE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 2" according to the variance site plan map dated January 22, 2000.

Mr. Klaus D. Conventz
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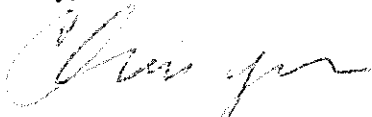
The applicant or current owners shall address the "open" status of Building Permit-BP Nos. 906218 and 906333 issued to subject TMK property by the DPW-Building Division. These "open" building permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before December 31, 2006 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.

The applicant or current owners shall confer with the DPW regarding the "plantings" identified within both shoulders of the rights-of-way fronting the subject TMK property identified on the variance site plan map. The status of these plantings, e.g. remove or prune these plantings to insure County "sight distance" requirements at this intersection of Queen Kalama Avenue and Naniloa Drive are met shall be addressed by the applicant or current owners prior to December 31, 2006 or sale of the property.

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

WRY:cd

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xc: Real Property Tax Office-Kona