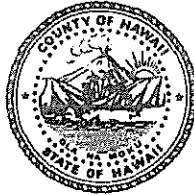


Harry Kim
Mayor



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

April 5, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-008

Applicant: KLAUS D. CONVENTZ
Owner: BISHIOP ESTATE/KAMEHAMEHA SCHOOLS
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 8-4-010:011

After reviewing your variance application, the Planning Director certifies the approval of **VARIANCE-VAR 07-008** subject to variance conditions. The variance allows portions of a "2 STORY HOUSE" and attached "OPEN CARPORT" to remain on Lot 9-A, "AS-BUILT", with minimum 17.20 feet front yard and attendant minimum 11.89 feet to minimum 12.16 feet front yard open space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard open space from Painted Church Road according to the variance application's site plan map signed and dated January 18, 2007. The variance is from the TMK property's minimum front yard and attendant minimum front yard open space required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, 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 9-A containing 14,362 square feet, Bishop Estate Lease No. 23,323, and situated at Honaunau, South.

The property is zoned Agricultural (A-1a) by the County and designated Urban "U" by the Land Use Commission (LUC).

APR 16 2007

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on February 2, 2007 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Don McIntosh Surveying. The variance site plan map, dated and signed on January 18, 2007, denotes a portion (corner/roof eave) of the "2 STORY HOUSE" and attached "OPEN CARPORT" (eave) were built into the property's minimum 20 feet front yard along Painted Church Road of "LOT 9-A" or subject TMK property.

The applicant's background report dated February 1, 2007 states in part:

"The dwelling was built under Building Permit No. K01134 issued December 27, 1974 and K01351 for an addition, issued June 19, 1975.

Owner was unaware of any problem, until a survey, conducted by Don McIntosh on January 17, 2007, revealed the encroachments while the property is escrow for conveyance.

The survey actually reveals that the predecessor's contractor placed the dwelling's footprint property and based on an existing corner stake 4.87 ft. east of the actual boundary stake.

This also lead (sic) obviously to the misplacement of the very old rockwall in North/South direction close to the road corner and junction of City of Refuge Road and Painted Church Road.

There is no question that this old survey marker caused the problem. In addition the rockwalls along Painted Church Road retain part of the county road structure; it is also not clear who built the walls or when they were built."

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 the "ROCKWALL" within the rights-of-way or "ROCKWALL" or landscaping, etc. straddling or along a common boundary line shared with "LOT 10-A".

3. **County Building Records:**

Real Property permit records show 2-Building Permits (K01134, K01351), 1-Electrical Permit (EK00873), and 1-Mechanical (MK00880) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and attached open carport on "LOT 9-A" was built pursuant to these building and associated construction permits issued between 1974 and 1976.

4. **Agency Comments and Requirements-VAR 07-008:**

- a. The State Department of Health (DOH) memorandum is dated March 5, 2007 states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. No comments were received from Department of Public Works (DPW). (Refer to Variance Conditions).

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 February 2, 2007 and February 21, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 23, 2007.

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 leasees/owner, submitted the variance application to address or resolve the dwelling/carport encroachments into the property's minimum front yard along Painted Church Road. The variance application's site plan map was prepared by a surveyor and denotes the, "AS-BUILT" location of the "2 STORY HOUSE" and attached "OPEN CARPORT", on "LOT 9-A". The current leasees became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owner or builders to deliberately create or intentionally allow these building encroachments to be built into the affected front yard.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
April 5, 2007

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 improvements between 1974 and 1976, the dwelling/open carport and eaves within the property's front yard along Painted Church Road 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 9-A with adjoining right-of-way (Painted Church Road) 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 these 30 + year old building encroachments, e.g. portion(s) of the 2-story dwelling (corner) and attached open carport (carport) including associated roof eaves constructed into the property's minimum 20 feet front yard along the Painted Church Road are not physically and/or visually obtrusive from the right-of-way (Painted Church Road). It appears that these small 30 year old building encroachments into this front yard do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns.

The subject variance application was acknowledged by letter dated February 13, 2007. The applicant requested a time extension until April 13, 2007 to introduce additional information regarding the land owner-Bishop Estate or Kamehameha School's authorization of the subject variance application requested the acknowledgment letter dated February 13, 2007. The Planning Director agreed to render a decision on the subject variance application by April 13, 2007.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
April 5, 2007

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

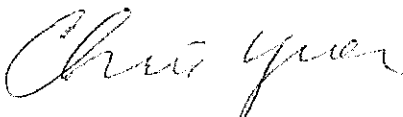
This variance request is approved subject to the following conditions:

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 a 2-story dwelling and attached open carport including associated roof eaves located on "LOT 9-A" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated and signed on January 18, 2007 by a surveyor. The approval of this variance permits the "2 STORY HOUSE" and "OPEN CARPORT" including associated roof eaves remain, "AS BUILT", on the subject TMK property or "LOT 9-A" according to the variance site plan map in subject variance file.
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
April 5, 2007

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
P:\WP60\WRY\FORMLETT\VAR07-008ZCSETBACKAPPTMK84010011.BC

xc: Real Property Tax Office-Kona