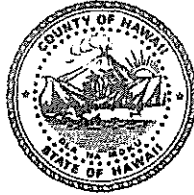


Harry Kim
Mayor



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 27, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-015

Applicant: KLAUS D. CONVENTZ
Owner: JONATHAN LEE
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 6-4-012:059, Lot 57

-After reviewing your variance application, the Planning Director certifies the approval of VAR 07-015 subject to variance conditions. The variance permits portions of a 1-Story Single Family Dwelling including attached-carport/entryway/ eaves to remain on Lot 57, with minimum 14.6 feet to minimum 14.7 feet rear yard and minimum 5.5 feet to minimum 5.8 feet front yard open yard space in lieu of the property's minimum 15.00 feet rear yard and property's minimum 10.00 feet front yard open space requirements along Waiahu Street, respectively, according to the variance application's survey map dated and signed on February 8, 2007. The variance is from the TMK property's minimum rear yard and minimum front yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 57 containing 8,000 square feet, is within Kamuela Lake-Land Subdivision and situated at Puukapu, Waimea, South Kohala, Hawaii. The TMK property's street address is 64-432 Waiahu Street.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 2
April 27, 2007

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

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on March 5, 2007 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, signed and dated February 8, 2007, denotes portions of a building and attached garage (dwelling) were built into the property's minimum 20 feet rear yard and minimum 14 feet front yard open space of "LOT 57" or subject TMK property.

The applicant's background report dated March 3, 2007 states in part:

Page 1. "The dwelling was built under Building Permit Nos. 60301 for the dwelling, issued August 01, 1974, and 901343 for storage addition, issued June 28, 1990.

Owner was unaware of any problem, until a survey, conducted by KKM-Surveys on February 08, 2007, revealed the encroachments while the property was in escrow for conveyance."

Page 2-3. "It is undersigned's determination and position that tax office and surveyor mislabeled the covered space as "carport", while in fact the structure is an approach shelter or porte cochere to the existing 2 car garage, which is clearly reflected as such in the tax assessor's sketch on public records.

Undersigned submits that in this case Section 25-4-45, Projections of Porte-Cocheres should apply, which in turn does not require a setback or open space inside a front yard.

Subject property is located within an area commonly known as the **wet side of Waimea**, with frequent winddriven rainshowers, making such porte cocheres nearly a necessity.

Whether the porte-cochere received in the past a permit, or was included in the two permits on record, is not quite clear.

However, owner had been advised, and agrees, that such permit, if missing would be immediately initiated as soon as the Director decides whether the structure requires a variance for the front yard projection, or alternatively finds, that the determination by undersigned is correct, and that the trellis structure is indeed a porte-cochere, and does not require a variance for this part of the application."

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 wooden fence, chain link fence, and wire fence and/or landscaping, etc. near or along/straddling boundary lines.

3. **County Building Records:**

Real Property permit records show 2-Building Permits (60301, 901343) were issued to subject TMK property in 1974 and 1990, respectively. It appears that the dwelling on "LOT 57" was built pursuant to building permits issued in 1974 and 1990.

4 **Agency Comments and Requirements-VAR 07-015:**

- a. The State Department of Health (DOH) memorandum dated March 30, 2007 states in part:

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

- b. The Department of Public Works (DPW) memorandum dated March 22, 2007 states in part:

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

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

The applicant shall remove any encroachments or obstructions within the County right-of-way (fence)."

The attached DPW-Building Division memorandum dated March 22, 2007 states in part:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
April 27, 2007

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

Others: Carport built without permits.” (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 sent on March 5, 2007 and March 16, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 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 owner, submitted the variance application to address or resolve the dwelling encroachments within the property’s minimum rear and front yards. The variance application’s site plan map was prepared by a surveyor and denotes the location of a “building” or dwelling and other site improvements, “AS BUILT”, on “LOT 57”. The current owner became aware of building encroachment issues during escrow. The 33 year old dwelling improvements were constructed by a previous owner(s) or builders. No evidence has been found to show indifference or premeditation by previous owner(s) or builders to deliberately create or intentionally allow portions of the dwelling and attached carport to be built within the affected yards.

It appears that the dwelling and subsequent dwelling improvements were constructed according to 2-building permits issued to subject TMK property in 1974 and 1990, respectively. It appears that during construction of the dwelling improvements during 1974 or 1990, the dwelling encroachment and attached carport within the property’s rear yard and front yard, respectively, went unnoticed by the builders and agencies.

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 57" with adjoining property (TMK: 6-4-011:076, Lot 70) or right-of-way (Waiahu Street) 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 33 years ago within the property's minimum rear yard and minimum front yard open yard space are not physically and/or visually obtrusive from the adjacent property (Lot 70) or right-of-way (Waiahu Street). It appears that these 33 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood; and, therefore, it is felt that these building encroachments into the property's minimum 20 feet rear yard and minimum 14 feet front yard open yard space identified by the applicant and 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 and attached open carport on "LOT 57" will not meet the minimum rear yard and minimum front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map prepared by KKM SURVEYS. The approval of this variance permits the "dwelling and attached carport" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 57" according to the variance site plan map signed and dated February 8, 2007.

The "Wooden Fence" located within the shoulder of Waiahu Street Right-of-Way and identified on the variance application's site plan map shall be removed or relocated to subject TMK property prior to sale of the property or transfer of title of the property by the current owners to others.

The applicant or current owner shall contact the DPW-Building Division in Kona and secure a building permit for existing "Open Carport" improvements, if necessary, that may have been constructed in association with previous building permits issued to construct the dwelling and storage addition prior to 1990. Any new building permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner 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 7
April 27, 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\VAR07-015ZCSETBACKTMKTMK64012059.BC

xc: Real Property Tax Office-Kona