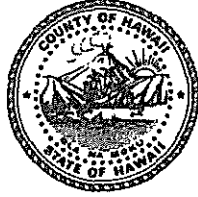


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

August 20, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-032

Applicant: KLAUS D. CONVENTZ
Owner: C&R DEVELOPMENT LLC
Request: Variance from Chapter 25, Zoning,
Minimum yards/Landscaping of yards
Tax Map Key: 7-3-051:096

After reviewing your amended variance request and application, the Planning Director certifies approval of Variance-VAR 07-032 subject to variance conditions. The variance allows portions of 2-Story Office Building(s) including covered walkways, lanais, and roof eaves and 1-story communication (phone) building to remain on Lot No C-35, "AS-BUILT", with minimum 7.76 to minimum 7.8 feet front yard measured from the minimum 10.00 feet future road widening setback line on the property along Kamanu Street and minimum 15.52 feet to minimum 16.15 feet front yard measured from the property's front boundary line along Maiiau Street and attendant minimum 1.54 feet to minimum 1.59 feet front yard open space measured from the minimum 10.00 feet future road widening setback line on the property along Kamanu Street; and, variance to permit existing landscaping improvements to remain within minimum 10.00 feet wide future road widening strip and remaining front yard along Kamanu Street and remaining front yard along Maiiau Street in lieu of required landscaping within minimum 20 feet front yard according to survey map dated and signed June 5, 2007. The variance is from the TMK property's minimum front yard(s) pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 13, Section 25-5-136, Minimum yards (1), Section 25-5-137, Landscaping of yards (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a)(b).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot No. C-35 containing 46,246 square feet [R], of the "KALOKO BUSINESS PARK SUBDIVISION", being a portion of the land(s) described in and covered by Royal Patent No. 8241, L. C. Award 7715, Ap. 11 to Lota Kamehameha, and situated at Kaloko, North Kona, Hawaii. The subject TMK property's address is 73-5618 Maiiau Street.

The property was re-zoned from Limited Industrial (ML-1a) to Industrial-Commercial Mixed Districts (MCX-1a) by the County according to Ordinance No. 07 11 (Effective: February 21, 2007). The property is designated Urban or "U" by the Land Use Commission (LUC) and is not within the Special Management Area (SMA).

2. **Variance Application-Site Plan.** The applicant, on behalf of the owner, submitted the original variance application, attachments, and filing fee to the Planning Department (Kona) on April 23, 2007. Subsequently, the applicant filed an amended variance request and revised site plan maps. The variance application's revised site plan maps were prepared by Pattison Land Surveying, Inc. The revised variance site plan map, signed and dated June 5, 2007, hereafter, referred to as variance site plan map, denotes the location of building improvements and other site improvements, "AS-BUILT" on "LOT NO. C-35". According to the variance site plan map portions of the 2-story building(s) or "Building Footprint" including continuous "Eave Line" and portion of 1-Story Nextel Building previously permitted by the County to be constructed on the subject TMK property previously zoned ML-1a, are now within the property's minimum 30 feet front yard (10 feet wide future road widening setback + 20 feet front yard) taken from Kamanu Street, and minimum 20 feet front yard taken from Maiiau Street, respectively; and, within minimum front yards required to be landscaped in property zoned MCX-1a by the Zoning Code.

The applicant's original background report dated April 23, 2007 states in part:

"The industrial/office building was built under Building Permit No. B-2006-0785K, currently in the process to receive final inspection with subsequent occupancy.

Owners were unaware of any problem until a survey conducted by Pattison Land Surveying, Inc. on April 17, 2007, revealed the encroachments, while the property is subject to escrow procedure for refinance."

Subsequently, the applicant submitted a revised background report dated May 10, 2007 and revised site plan (survey) map signed and dated June 5, 2007, to denote a 10 feet future road widening strip on the property and address building positions or encroachments into the property's minimum front yards along Kamanu Street and Maiiau Street and required minimum landscaping requirement within the property's front yards along Kamanu and Maiiau Street pursuant to the Zoning Code.

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 any retaining walls, rock walls, fencing, and/or landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County Real Property building permit records show 6-Building Permits (011426, 025992, B2006-0785K, B2007-0194K, B2007-0525K, B2007-1009K), 7-Electrical Permits (E016529, E2006-0973K, E2006-1985K, E2007-0280K, E2007-0849K, E2007-1046K, E2007-1295K), and 5-Mechanical (M2006-0909K, M2006-1121K, M2006-1224K, M2006-1282K, M2007-0238K) or Plumbing Permits were issued to subject TMK property. It appears that the 2-story building including associated roof eaves, and "Nextel" telecommunication buildings and associated site improvements on "LOT No. C-35" were built pursuant to these 6-building permits and associated construction permits issued between 2001 and 2007.

4. **Agency Comments and Requirements-VAR 07-032:**

- a. The State Department of Health (DOH) memorandum dated May 25, 2007 states:

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

- b. The Department of Public Works (DPW) memorandum dated June 5, 2007 states in part:

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

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, notices were sent (mailed) on April 23, 2007, May 28, 2007, and July 7, 2007, respectively, by the applicant. Public Notice of the amended variance application and correction notices were published in the Hawaii Tribune Herald and West Hawaii Today on July 6, 2007, and July 16, 2007, respectively.

Posted Sign. The applicant submitted an affidavit dated July 7, 2007 and photo of the posted sign on to the Planning Department in Kona on July 9, 2007.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letters from surrounding property owners or the general public were received:

- 6a. Objection letter dated May 11, 2007 from Mr. Denny K. L. Duquette (addressed to the Mayor) received on May 17, 2007.
- 6b. Objection letter from Ms. Carol Ann von Hake dated June 12, 2007 received on June 18, 2007.
- 6c. Objection letter from Mr. Don McArthur, Manager-DRMCA Property Investments, LC dated June 27, 2007 received on July 3, 2007.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, submitted the variance application to address or resolve the building position(s) and minimum landscaping requirements required within the front yards of the subject TMK property. The variance application's site plan map was prepared by Pattison Land Surveying, Inc. and is signed and dated June 5, 2007. This site plan map denotes the location of the buildings and other site improvements, "AS BUILT", on "LOT NO. C-35". The owner became aware of building encroachment issues within the minimum front yards and other landscaping issues during refinancing of the property or after the variance application was filed at the Planning Department. The original variance request building encroachment into the property's minimum front yard open space was an oversight by the builder or owner during construction of the 2-story building and related site improvements prior to submitting an application to rezone the property and refinancing of the property. Furthermore, the building positions within the minimum front yards and minimum landscaping requirements were further overlooked by the owner and Planning Department during deliberations to rezone the property from Limited Industrial (ML-1a) to Industrial-Commercial Mixed Districts (MCX-1a).

It appears that the existing building including recent building additions were constructed according to building permits and other associated construction permits issued to subject TMK property. The construction and position of the 2-story building (shell) including the "Nextel" telecommunication building improvements and related site and landscaping improvements were built pursuant to building permits issued to the property prior to property being rezoned. During deliberations to rezone the property, the minimum yard requirements and landscaping within the front yard were overlooked and went unnoticed by the owner and agencies during construction and/or during deliberations to rezone the subject TMK property from ML-1a to MCX-1a.

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 buildings and related site improvements to fit within the correct building envelope including meeting minimum landscaping requirements prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining Rights-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 including landscaping constructed or established on the subject TMK property within the minimum front yards were approved and constructed prior to rezoning the property. The building position(s) and minimum and minimum required landscaping improvements within the property's front yards were an oversight by the current owner and agencies. Therefore, given the unusual circumstances surrounding the variance request, it is felt that the 2-story building and telecommunication building encroachment(s) into affected front yards and lack of minimum landscaping required by the Zoning Code, in this instance, does not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 28, 2007 and additional time to complete the variance background report was necessary. The applicant agreed to an extension of time to complete the variance background report and render decision on subject variance application to on or before August 27, 2007.

Based on the foregoing findings and unusual circumstances, the variance requested would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code of 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. The approval of this variance permits the building improvements and related site improvements constructed pursuant to 6-building permits issued to the subject TMK property to remain, "AS BUILT", on the subject TMK property or "LOT NO. C-35" according to the variance site plan map signed and dated June 5, 2007 and information provided by the applicant.

The applicant or current owner shall submit application for Plan Approval and required attachments to the Kona Planning Department on or before September 15, 2007 and secure Final Plan Approval on or before October 15, 2007.

4. Future building improvements including change of permitted uses within the 2-story building(s) are subject to review under Plan Approval and subject to Final Plan Approval conditions and 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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August 20, 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/DSA:cd

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xc: Real Property Tax Office-Kona
Planning Department-Kona
Denny K. L. Duquette
Carol Ann von Hake
DRMCA Property Investments, LC

TRANSMISSION VERIFICATION REPORT

TIME : 08/22/2007 10:18
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