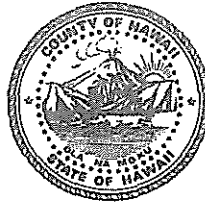


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

June 24, 2009

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

Dear Mr. Conventz:

SUBJECT: VARIANCE-VAR 08-075
Applicant: KLAUS D. CONVENTZ
Owner: JOSHUA M. FLETCHER
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 7-2-009:004, Lot 57

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-075 subject to variance conditions. The variance permits portions of "Garage" attached to "2 Story Dwelling", "AS-BUILT", to remain upon Lot 57 with a minimum 10.7 feet to minimum 18.7 feet front yard and attendant minimum 10.7 feet front yard open space along Puukala Road pursuant to survey map signed and dated December 4, 2008. The variance is from the TMK property or Lot 57's minimum 20 feet front yard and attendant minimum 14 feet front yard open yard space 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 referenced TMK property containing 13,000 square feet, Lot 57, Kona Ocean View Properties, File Plan 637, is situated at Puukala, North Kona, Hawaii. The referenced TMK property's address is 72-1009 Puukala Road.

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The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted variance application, on behalf of owner, submittals, and filing fee on December 17, 2008. The application includes an authorization letter "Buyer Joshua M. Fletcher" signed and dated December 6, 2008. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, dated December 4, 2008 indicates a portion of "Garage" attached to dwelling was built into minimum 20 feet front yard of "LOT 57" or subject TMK property.

The applicant's background information dated December 16, 2008 states in part:

"The residence was built under Building Permit No. 842022 issued November 07, 1984 and an addition under Permit No. 885121, issued February 08, 1988 and a carport under Permit No. 935999, issued October 12, 1993. This last permit covered also the under-floor closed-in open staircase.

Owner was unaware of any problems, when "AS-BUILT" survey by KKM Survey conducted on December 04, 2008, revealed the setback violation, while the property is in escrow. The buyer's authorization letter is also included."

Note: The variance request does not address the location or position of CRM Retaining Wall, wire fencing, and other walls and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Real Property Tax Office building permit records show 3-Building Permits, 2-Electrical Permits, and 2-Mechanical or Plumbing Permits were issued to subject TMK property. It appears that the 2-story dwelling and attached garage upon on "LOT 57" was built pursuant to these building and associated construction permits issued between 1984 and 1993.

4. **Variance Application-VAR 08-075-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated February 10, 2009 states:

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

- b. The Department of Public Works (DPW-Engineering) memorandum dated February 13, 2009 states:

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

Our records indicate no permit was obtained for construction of a driveway approach. In addition, the retaining wall construction within the County right-of-way may not be permitted. The applicant shall remove any encroachments or obstructions within the County right-of-way not meeting with the approval of the Department of Public Works and Chapter 22 of Hawaii County Code."

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to a list surrounding property owners and proof of mailing notices to the Planning Department. According to the applicant's affidavits, the first and second notices were sent or mailed by US Mail to surrounding property owners on December 17, 2008 and February 11, 2009, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2009.
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(s), submitted a variance application to address or resolve the garage encroachments within a minimum 20 feet front yard of subject TMK property. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling, attached garage, and other site improvements, "AS BUILT", upon "LOT 57". It appears that both the seller and buyer became aware of building position issues circa after the survey map was submitted for escrow purposed. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow the carport or garage encroachments to be built within the affected front yard.

It appears that the original 2-story dwelling and subsequent building additions including access to subject TMK property via Puukala Road were constructed upon Lot 57 according to 3-building

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permits and other associated construction permits issued to subject TMK property. Further, it appears that access including driveway to carport or garage encroachment completed circa 1993 within the property's 20 feet front yard went unnoticed by the previous owner/builder and agencies.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove a portion of garage within the front yard identified on the variance site plan map and/or redesigning or relocating the 2-story dwelling and attached carport or garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 57 with adjoining the right-of-way (Puukala Road) fronting Lot 57 and resubdivision to modify property lines or adjust minimum yards, etc.

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 carport or garage constructed or completed approximately 15 years ago within the minimum front yard are not physically and/or visually obtrusive from the adjacent properties or right-of-way (Puukala Road). It appears that the 15 + year old building carport or garage encroachment within the property's front yard along Puukala Road do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portion of carport or garage constructed into minimum 20 feet front yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 4, 2009 and additional time to consider DPW-Engineering comments was necessary. The applicant agreed to grant the Planning Director additional time to render decision on the variance application to June 30, 2009.

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 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 following variance 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's attached carport or garage located upon "LOT 57" will not meet the minimum front yard and attendant minimum front yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 4, 2008. The approval of this variance permits the "Garage" improvements to remain, "AS BUILT", upon subject TMK property or "LOT 57" according to the variance site plan map dated and signed December 4, 2008.

The applicant or current owner shall contact the DPW-Engineering Division in Kona to address DPW comments regarding current access improvements to subject TMK property or Lot 57. The DPW-Engineering Division in Kona shall examine original building permits and associated construction permits issued by the DPW to previous owners of subject TMK property or Lot 57; and, determine if applicant or current owner is responsible to remove any driveway improvements including portion of "CRM Retaining Wall" identified and constructed by others within Puukala Road right-of-way on the variance site plan map.

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.

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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare Variance-VAR 08-075 to be null and void.

Sincerely,

A handwritten signature in cursive script, appearing to read "BJ Leithead Todd".

BJ LEITHEAD TODD
Planning Director

WRY:mad
PAWP60\WRY\FORMLETT\VAR08-075ZCAPP.BC-RANSFORD-FLETCHER

xc: Real Property Tax Office-Kona