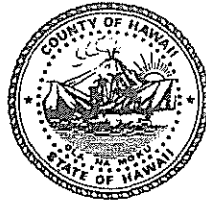


William P. Kenoi
Mayor



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

August 11, 2009

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

Dear Mr. Conventz:

SUBJECT: VARICANCE APPLICATION – VAR-09-018

Applicant: KLAUS D. CONVENTZ

Owners: DUANE D. ERWAY, ET AL.

Request: Variance from 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

TMK: 7-7-018:037, LOT 13-A

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-018 (VAR: 09-018), subject to variance conditions. The variance to allow portions of the "2 Story dwelling" or duplex dwelling (OD Permit 92-66) constructed on Lot 13-A with a minimum 15.5 to a minimum 17.1 feet front yard and attendant minimum 11.00 feet to a minimum 13.4 feet front yard open space along Princess Ke'elikōlani Drive in lieu of minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space requirements measured from the property's front boundary line along Princess Ke'elikōlani Drive: and, minimum 14.1 feet to minimum 15.00 feet rear yard and attendant minimum 8.5 to minimum 10.00 feet rear yard open space in lieu of the property's minimum 15.00 rear yard and attendant minimum 10.00 feet rear yard open space requirements according to the survey map signed and dated April 20, 2009. The variance is from the subject property's minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space requirements and required minimum 15.00 feet rear yard and required minimum 10.00 feet rear yard open space pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76,

AUG 11 2009

Mr. Klaus Conventz

Page 2

August 11, 2009

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 property, consisting of approximately 12,912 square feet of land, is situated within the White Sands Terrace Subdivision, La'aloa 1st North Kona, Hawai'i. The subject property's street address is 77-Princess Keelikōlani Drive. The subject property is zoned Single Family Residential –7,500 Square Feet (RS-7.5) by the County and designated Urban or U" by the State Land Use Commission (LUC).
2. Variance Application-Site Plan. The owner submitted the variance application, attachments, and filing fee on April 24, 2009 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and denotes that portions of the "2-Story dwelling" or duplex dwelling (OD Permit 92-66) into the minimum 15 feet front and rear yard setback and minimum 10-foot wide front and rear yard open space.
3. County Building Records:
 - a. Hawai'i County Real Property Tax Office records indicate that a building permit (925689) was issued to the subject property for the construction of a 2-story dwelling of duplex dwelling consisting of 2 bedrooms, 2-bath with a kitchen, living room, dining room and den with covered lanai on the upper level and the lower level consists of 2 bedrooms, 2 bath with a kitchen, living room, dining room, recreation room and a two car garage.
4. Variance Application (VAR: 09-018)-Agency Comments and Requirements:
 - a. The State Department of Health (DOH) memorandum dated May 12 2009 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. The Department of Public Works (DPW) Memorandum dated April 17, 2009 states:

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

The applicant shall remove the encroaching walkway within the County right-of-way.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.”

5. Notice to Surrounding Property Owners. A copy of first and second notices sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first notice was mailed on April 24, 2009 and the second notice was mailed on May 13, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 15, 2009.
6. Comments from Surrounding Property Owners or Public. No written comments or objections from surrounding property owners or general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address and/or resolve the existing 2 story dwelling or duplex dwelling encroachments within the property's minimum 20 feet front yard and 15 feet rear yard setbacks. The variance application's site plan denotes the location of the 2 story dwelling or duplex dwelling situated on "Lot13-A". Pursuant to the applicant's background information, "The owners were unaware of any encroachment until an "As Built" survey was conducted on April 20, 2009 by KKM Surveys revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the 2 story dwelling or duplex dwelling into the property's minimum 20 feet front yard and 15 feet rear yard setbacks and attendant minimum 14 feet front yard 10 feet rear yard open space required by the Zoning Code.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front and rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the as-built 2 story dwelling or duplex dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

Another alternative is to consolidate the subject property with the road right-of-way (Princess Ke'elikōlani Drive) fronting the subject property and resubdivide consolidated property to modify property lines and adjust minimum front yard setback. This alternative could also used to modify and adjust the minimum rear yard setback. It is felt that these alternatives would not practical or reasonable.

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.

The applicant's variance application was acknowledged by letter dated May 7, 2009; and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the Variance Application to August 14, 2009.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the 17 years of existence of the structure. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying

Klaus D. Conventz
Page 5
August 11, 2009

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 owner shall comply with Department of Public Works memo stating: "The applicant shall remove the encroaching walkway within the County's right of way.
4. The 2-story dwelling or duplex dwelling built upon the subject property (Lot 13-A) will not meet the minimum front and rear yards pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated April 20, 2009. The approval of this variance permits portions of the 2-story single family dwelling or duplex dwelling to remain upon the subject site according to the site plan dated April 20, 2009.
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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 09-018 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:mad
O:\Variances\Zone7\VAR-09-018\TMK7-7-018-037Erway.doc

xc: Kona Office
Real Property Tax Office (Kona)