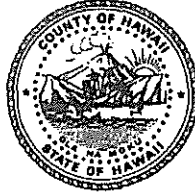


Harry Kim
Mayor



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

March 15, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (WH) VAR 05-007
Applicant: KLAUS D. CONVENTZ
Owners: OLEGARIO JAUREGUI, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-3-059:012, Lot 7-E

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 05-007 permits portions of a dwelling ("1-Story House") and attached garage to remain, "AS-BUILT", on Lot 7-E, with minimum 19.3 feet to minimum 19.5 feet rear yard according to the variance site plan dated December 23, 2004. The variance request is from the subject TMK property's minimum 20.0 feet rear yard requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 7-E containing 10,072 square feet of Ali'i Kehau, being a portion of Grant 1607 to Nawahie, is situated at Kalaoa 4th, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about January 10, 2005. The variance application's site plan map is drawn to scale and prepared by WES THOMAS ASSOCIATES. The variance site plan map, dated "DECEMBER 23, 2004", denotes portions of the "1-Story House/Garage" were built within a 20-foot rear yard of "LOT 7-E" or subject TMK property.

The applicant's background states in part:

"The 1-story dwelling was built under Building Permit No. 025503, issued July 3, 2002, with an additional Building Permit No. 025902 of the same date for the required westerly retaining rockwall.

The owners were unaware of any problems until December 23, 2004, when a survey conducted by Wes Thomas & Associates revealed the violation, while the property was in escrow for contemplated conveyance of ownership.

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 "CRM Retaining Walls", fencing, and landscaping, etc. along or straddling common boundary lines or within the road fronting the property.

3. **County Building Records:**

(ID County building records show 2-Building Permits (025503 and 025902), Electrical Permit (E025748), and Mechanical (M025379) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling or "1-Story House" and other site improvements on "LOT 7-E" were constructed according to these building permits and associated construction permits issued during 2002. The status of an active or "open" permit (Building Permit No. 025902) will be addressed by the applicant or current owner(s). (See variance conditions).

4. **Agency Comments and Requirements-(WH) VAR 05-007:**

- a. The Department of Public Works (DPW) memorandum dated February 24, 2005 states in part:

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

1. Building shall conform to all requirements of code and statutes pertaining to building construction. (See attached memorandum from our Building Division).'

The attached DPW memorandum dated February 17, 2005 states in part:

"We oppose the approval of the application for the reasons noted below. The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear

Others: The building permit No. 025902 is not finalized."

b. The State Department of Health (DOH) memorandum dated February 25, 2005 states:

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

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 January 10, 2005 and February 11, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2005.
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 owners, submitted the variance application to address or resolve the dwelling/garage encroachments within a minimum 20-foot rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT", on "LOT 7-E". The applicant or owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard.

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It appears that the existing dwelling improvements and wall improvements were constructed pursuant to building permits and other associated construction permits issued to subject TMK property by the DPW. It appears that during construction of the dwelling improvements built during 2002 and the building encroachment within the property's minimum 20-foot rear yard 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 7-E with adjoining property(s) (TMK: 7-3-005:092, Lot 5-B-1 and TMK: 7-3-005:103, Lot 5-C-2) 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 4 years ago within the minimum 20-foot rear yard are not physically and/or visually obtrusive from the adjacent property(s) or road right-of-way (ROAD LOT "A"). It appears that these 4 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected 20-foot rear identified on the variance application's site plan map and survey report will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 4, 2005 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance.

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 located on "LOT 7-E" will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report dated December 23, 2004. The approval of this variance permits the "1-Story House" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 7-E" according to the variance site plan map and survey report dated December 23, 2004.

The applicant or current owners shall address the status of Building Permit-BP No. 025902 for "ROCKWALL" issued to subject TMK property by the DPW-Building Division (Kona). All building and associated construction permits issued to the 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(s) to others.

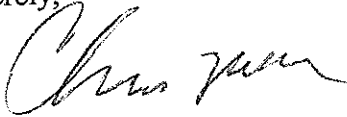
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.

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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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-Kona