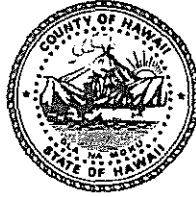


Harry Kim
Mayor



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 10, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 05-025

Applicant: KLAUS D. CONVENTZ
Owners: SIDNEY T. YANABU, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-7-012:019, Lot 54

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit VAR05-025 allows portions of the dwelling and attached 2-car open carport to remain, "AS-BUILT", with a minimum 13.5 feet rear yard and attendant minimum 8.5 feet rear yard open space, in lieu of the minimum 20.0 feet rear yard and attendant minimum 14.0 feet rear yard open space required, according to the variance site plan map dated February 24, 2005. The variance is from the TMK property's minimum rear yard and minimum rear yard open yard requirements, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A), 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, Lot 54 containing 10,000 square feet, within Sunset View Terrace Lots-Unit II, being a portion of Land Patent 8289, Land Commission Award 7228 to Loe, is situated at Holualoa 4th, North Kona, Hawaii. The property's street address is 77-6469 Leilani Street.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about March 11, 2005. The variance application's site plan map is drawn to scale and prepared by PATTISON LAND SURVEYING, INC. The survey report and variance site plan map was signed and dated February 24, 2005. The variance site plan map, denotes portions of the carport and 1-story dwelling were built within the side yard and rear yard of subject TMK property or "LOT NO. 54".

The applicant's background dated March 11, 2005 states in part:

"The dwelling was built under Building Permit No. 02529, issued August 4, 1977 with additions in 1980 and 1983 under Building Permit Nos. 07676 and 05821 respectively.

Subsequently, a carport roof extension of 6 ft. 11 in. fascia to fascia, supported by the postline reflected on the Pattison survey (flat roof), was added towards the easterly boundary without permit.

Undersigned advised the owners, and owners agree, to remove this additional roof including the posts permanently to the initial approved 2-car carport."

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 Wall, chain-link fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Recent building records indicate that Building Permits issued in 1983 (2) and 1986 (1) were closed or "finaled". It appears that the original dwelling permit to build the original dwelling circa 1977 and subsequent building permits issued between 1980 and 1986 for other improvements were closed or "finaled" by the DPW. However, current County building records indicate Electrical Permit (EK07033) and Mechanical (MK04548) or Plumbing Permit issued to subject TMK property in 1986 and 1983, respectively, are active or "open".

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4 **Agency Comments and Requirements-VAR 05-025:**

- a. The State Department of Health (DOH) memorandum dated April 27, 2005 states:

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

- b. No comments were received from the Department of Public Works (DPW). However, County building permits records indicate construction permits issued to subject TMK property are "open". 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 mailed on March 11, 2005 and April 4, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about April 4, 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 encroachments within a minimum rear yard and side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and attached 2-car carport and other site improvements, "AS BUILT", on "LOT NO. 54". The current owners became aware of building encroachment issues after the survey map and report were completed for escrow purposes. 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 rear yard. The applicant or owner(s) will remove the carport encroachment into the property's side yard. (See variance conditions).

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. During construction of the dwelling's carport, the carport improvements into the property's rear yard went unnoticed.

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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's carport to fit within the correct building envelope prescribed by the Zoning Code. Portions of the carport within the minimum side yard will be removed.
2. Consolidation of with adjoining lot (TMK: 7-7-012:018, Lot 55) 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 29 years ago within the minimum rear yard are not physically and/or visually obtrusive from the adjacent property (Lot 55) or right-of-way (Leilani Street). It appears that these 29 year old building encroachments into the property's minimum rear yard 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 rear yard and attendant rear yard open yard space 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 March 22, 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 1-story dwelling's attached 2-car carport on "LOT 54" will not meet the minimum rear yard and attendant rear yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report. The approval of this variance permits the dwelling/carport improvements to remain, "AS BUILT", on the subject TMK property or "LOT 54" according to the variance site plan map and survey report dated February 24, 2005.

The applicant or current owners shall address the status of permits-EK07033 and MK04548 issued to subject TMK property by the DPW-Building Division (Kona). These active or "open" construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before June 30, 2006 or prior to transfer of title of the property or sale of the property.

The applicant or current owner(s) shall remove the existing carport encroachment into the property's minimum side yard identified on the variance site plan map. These encroachments shall be removed on or before June 30, 2006 or prior to transfer of title of property or sale of the property.

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