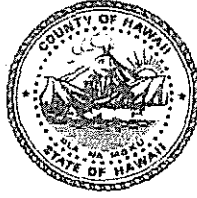


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED™ AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Aupuni Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

March 2, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (WH) VAR 05-045

Applicant: KLAUS D. CONVENTZ
Owners: ROBERT C. RANFRANZ, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-7-013:010, Lot 78

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. 05-045 allows portions of a dwelling to remain on Lot 78, "AS-BUILT", with a minimum 8.7 feet to 9.6 feet side yard in lieu of the minimum 10 feet side yard requirements according to the variance site plan map signed and dated May 9, 2005. The variance request is from the subject TMK property's minimum side yard requirements pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 79 containing 10,000 square feet, is within Sunset View Terrace, Unit 2, File Plan 684, and situated at Holualoa 4th, North Kona, Hawaii. The property's street address is 77-6471 Kilohana Street.

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 May 16, 2005. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, dated May 9, 2005, denotes portions of the "Dwelling" were built within a 10 feet side yard of "LOT 78" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1970 under Building Permit No. 43347 for the dwelling, issued December 5, 1969, Nos. 46137 and 762420 both for additions, issued October 9, 1970.

Owners were unaware of any problems when a setback survey, conducted by KKM-Surveys on May 9, 2005, revealed the encroachments, shortly after they purchased the property."

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 Walls, wire fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 5-Building Permits (H43347, H46137, 762420, K05649, and 035144), 3-Electrical Permits (EH30743, EK01570, and EK05047), and 1-Mechanical (MH14423) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling on "LOT 78" was built pursuant to these building and associated construction permits issued between 1969 and 2003.

4. **Agency Comments and Requirements-(WH) VAR 05-045:**

- a. The State Department of Health (DOH) memorandum dated September 13, 2005 states:

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

- b. The Department of Public Works (DPW) did not submit any comments.

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 May 16, 2005 and August 16, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 18, 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 10 foot side 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 78". The current owners became aware of building encroachment issues "after they purchased the property". 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.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 5-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1969 and 2003, the dwelling encroachment within one of the property's 2-side yards 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 78 with adjoining lot (TMK: 7-7-013:009, Lot 79) and resubdivision to modify property lines or adjust minimum yards.

INTENT AND PURPOSE

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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 35 + years ago within the minimum 10 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 79) or public right-of-way (Kilohana Street). It appears that these 35 + 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 side yard 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 August 11, 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.

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3. Portions of the dwelling located on "LOT 78" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report dated May 9, 2005. The approval of this variance permits the "Dwelling" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 78" according to the variance site plan map and survey report dated May 9, 2005.

The applicant or current owners shall address the status of Building Permit-BP No. 035144 issued to subject TMK property by the DPW-Building Division (Kona). Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finalized" 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.
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