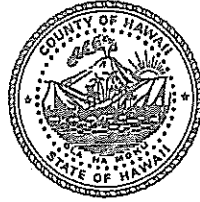


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

December 9, 2005

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. (WH) VAR 05-047
Applicant: KLAUS D. CONVENTZ
Owners: PAUL BELLINO, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-6-017:008, Lot 34

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-047 allows portions of a 2-story dwelling/lanai/eave or "Dwelling", "AS-BUILT", to remain on Lot 34, with a minimum 14.6 feet to minimum 14.8 feet front yard(s), minimum 9.1 feet to minimum 9.3 feet front yard open space, and minimum 3.9 feet side yard open space requirement in lieu of the minimum 15.00 feet front yard(s), minimum 10.00 feet front yard open space requirements, and minimum 4.00 feet side yard open space requirements according to the variance site plan map dated and signed May 3, 2005. The variance request is from the subject TMK property's minimum front yard and attendant front yard and side yard open space requirements pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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BACKGROUND AND FINDINGS

1. **Location**. The subject property, Lot 34 containing 8000 square feet, being a portion of Allotment 34 of the Holualoa^{1st} and 2nd. Hui Lands, and situated at Holualoa^{1st} and 2nd, North Kona, Hawaii. The property's address is 76-6217 Holualoa Beach Road.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about May 19, 2005. The variance application's site plan map drawing is drawn to scale and signed on May 3, 2005 by Kevin McMillen, LPLS, or KKM SURVEYS. The site plan map denotes the location of the "Dwelling" encroachments, "AS-BUILT", within the minimum front and associated front and side yard open space requirements of the subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1992 under Building Permit Nos. 906331 and 916617 for dwelling 1 addition, issued November 25, 1991.

Owners were unaware of any problems when a setback survey conducted by KKM-Surveys on May 3, 2005, revealed the encroachments, while the property is subject to current escrow procedure for conveyance."

3. **Agency Comments and Requirements-(WH) VAR 05-047:**

- a. The Department of Public Works (DPW) memorandum dated June 14, 2005, states in part:

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

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

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2. The applicant shall remove any encroachments or obstructions within the County Right-of-Way."

The copy of the DPW memorandum dated June 13, 2005, states in part:

"We have no comments or objections to the application."

- b. The State Department of Health (DOH) memorandum dated June 16, 2005 states:

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

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on May 11, 2005 and June 13, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, is trying to resolve the dwelling encroachments within the property's minimum yards. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling and other site improvements, "AS BUILT", on "LOT 34, UNIT 2". The site plan map identifies the dwelling's building position together with other building issues within the property's minimum yards and attendant open yard requirements pursuant to the Hawaii County Zoning Code. The applicant and/or current owners became aware of building encroachment issues after a survey and survey map of the property was completed or prepared for escrow purposes. No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the 13 year old building encroachments to be built. The original dwelling and subsequent building additions and associated site improvements were constructed under valid building permit(s) and other construction permits issued by the County; and initial inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

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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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 34 with adjoining rights-of-way or lot 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 13 year old dwelling encroachments into the minimum yards and associated open yard spaces are not physically and visually obtrusive from adjacent property(s) or rights-of-way. It appears that the dwelling/open lanai and roof eave encroachments do not depreciate or detract from the character of the surrounding neighborhood or surrounding building or land patterns. Therefore, it is felt that the existing dwelling and open lanai/eave encroachments within the minimum yards identified on the variance application 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 June 3, 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:

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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 a dwelling and lanai/roof eave on the subject TMK property or Lot 34 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows dwelling and lanai eave/gutter encroachments and/or building improvements meeting minimum DPW residential setbacks identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (Lot 34).
4. Future 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

WRY:cd
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xc: Real Property Tax Office-Kona