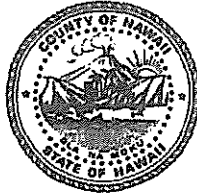


Harry Kim
Mayor



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

May 26, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 05-091

Applicant: KLAUS D. CONVENTZ
Owner: A. REYNELL SHEFFER TRUST
Request: Variance from Chapter 25, Zoning,
Minimum Yards

Tax Map Key: 7-7-013:041, Lot 1

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 05-091 subject to variance conditions. The variance permits portions of a dwelling/carport, "AS-BUILT", to remain on Lot 1 with a minimum 9.23 feet to 9.82 feet side yard in lieu of the minimum 10.00 feet side yard according to the variance site plan map dated and signed August 23, 2005. The variance request is from the subject TMK property's minimum yard pursuant to the 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 1 containing 16,400 square feet, is within "HOLUALOA ESTATES", being a portion of R. P. No. 7289 and L.C. Award No. 7228 to Loe, and situated at Holualoa 4th, North Kona, Hawaii. The TMK property's address is 77-6449 Marlin Road.

The property is zoned Single-Family Residential (RS-15) 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 September 19, 2005 to Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc. The variance site plan map is signed and dated August 23, 2005, denotes portions of the dwelling (living area)/carport were built within a minimum 10 feet side yard of "LOT NO.1" or subject TMK property.

The applicant's background dated September 18, 2005 states in part:

"The dwelling was built in 1977 under Building Permit No. 02243, issued January 18, 1977, with additions under Building Permit No. 02338, issued March 21, 1977, Building Permit No. 06959, issued May 22, 1985 and No. 07210, issued December 12, 1985.

Owner was unaware of any problems when a setback survey, conducted by Thomas G. Pattison on August 23, 2005 revealed the encroachments while the property was in escrow for conveyances."

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 perimeter rock walls and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 5-Building Permits (K02243, K02338, K06959, K07210, 935027), 4-Electrical Permits (EK01692, EK06309, EK06610, E935290), and 3-Mechanical (MK01409, MK05267, M935119) or Plumbing Permits were issued to subject TMK property. It appears that the dwelling and associated site improvements on "LOT NO. 1" were built pursuant to building permits and associated construction permits issued between 1977 and 1993.

4. **Agency Comments and Requirements-VAR 05-091:**

- a. The State Department of Health (DOH) memorandum dated October 19, 2005 states:

"The Health Department found no environmental health concerns with

regulatory implications in the submittals.”

- b. The Department of Public Works (DPW) memorandum dated October 18, 2005 states in part:

“Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).” (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 September 19, 2005 and October 17, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about October 13, 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 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 NO. 1”. 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 between 1977 and 1993. It appears that during construction of the dwelling and open carport improvements, etc. the building encroachment within a minimum 10 feet side yard went unnoticed.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

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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 No. 1 with adjoining lot (TMK: 7-7-013:042, Lot 2-A) 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 13 to 29 +/- year old building encroachments constructed between 1977 and 1993 within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 2-A) or right-of-way (Marlin Road). It appears that these building encroachments into the property's affected side 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 side yard identified on the variance application's 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 October 6, 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/open carport located on "LOT NO. 1" will not meet the minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated August 23, 2005. The approval of this variance permits the dwelling/open carport improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 1" according to the variance site plan map signed and dated August 23, 2005.

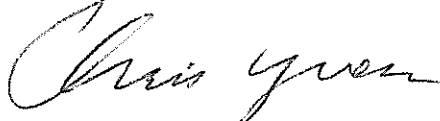
The applicant or current owners shall address the status of the "open" electrical and mechanical permits issued to subject TMK property by the DPW-Building Division. The following electrical permits-EK06309, EK06610, E935290 and "open" mechanical permit-M935119 shall be closed or "finaled" by the DPW-Building Division on or before September 30, 2006 or 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.

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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