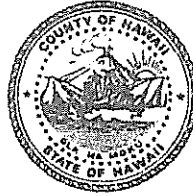


Harry Kim
Mayor



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

February 13, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 05-099

Applicant: KLAUS D. CONVENTZ
Owner: LILLIA F. KRIEGER TRUST
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 8-2-005:006

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-099 permits portions of a dwelling ("TWO STORY RESIDENCE") to remain on property, "AS-BUILT", with a minimum 7.55 feet side yard and attendant minimum 3.37 feet side yard open space in lieu of the minimum 8.0 feet side yard and attendant minimum 4.0 feet side yard open space according to the variance site plan map dated and signed October 20, 2005. Pursuant to the applicant, existing carport and lanai trellis within the front yard of the subject TMK property were built without building permits and shall be removed. The variance is from the TMK property's minimum yard and attendant open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

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1. **Location.** The subject TMK property containing 4213 square feet, is a portion of Royal Patent No. 8021, L.C. Aw. 226-B, Apana 2 to Kekoa, and situated at Waipunaula, South Kona, Hawaii. The TMK property's street address is 82-6033 Manini Beach Road.

The property is zoned Single-Family Residential (RS-15) by the County and designated "Urban" by the State Land Use (SLU) Commission. The TMK property is within the Special Management Area (SMA); and does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about October 28, 2005. The applicant's variance application site plan or map drawing is drawn to scale and was signed by a RPLS and is dated "10/20/05" (October 20, 2005). The variance application's site plan or survey map by PATTISON LAND SURVEYING, INC. denotes the building envelope, "TWO STORY RESIDENCE", and other site improvements, As-Built, on "PARCEL No. 6".

The applicant's background dated October 26, 2005 states in part:

"The dwelling was built in 1975 under Permit No. 566. No other information is available on record.

Owner was unaware of any problems when a setback survey, conducted by Thomas G. Pattison on October 20, 2005 revealed the encroachments while the property is in escrow for conveyance."

"It should also be pointed out that undersigned/consultant advised the owner that the two (2) lean-to-style roofs projecting from the front house wall (and serving as a carport), as well as the lanai trellis cover projecting from the storage room (into the South setback), must be permanently removed. Both are not structurally sound and were built without permits.

Owner agrees to remove both roof covers as advised during the variance procedure."

Note: The variance application's site plan map does not identify the location of any Independent Wastewater System (IWS) or cesspool on subject TMK property; and, the CRM retaining walls/wood lattice, dry rock walls, fence, and patio (concrete) improvements and/or landscaping improvements straddling or along common boundary lines shared with adjoining property are not being addressed by the variance application. (See DOH comments below and variance conditions).

3. **Agency Comments and Requirements-WH (VAR 05-099):**

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

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

Buildings 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 December 13, 2005 states in part:

"We oppose the application for the reasons noted below.

All new building construction shall be conditioned on the comments as noted below.

The minimum setbacks shall be maintained as follows:

3 ft. side, 3 ft. rear

The projections do not meet setback requirements and should be corrected."

- b. The State Department of Health (DOH) memorandum dated February 1, 2006, states:

"Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of all existing wastewater systems."

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. According to the applicant's notarized affidavits, it appears that first and second notice(s) were mailed on October 28, 2005 and December 5, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, portions of the dwelling encroach into the property's (north) side yard. These encroachments are identified on the survey map dated signed and dated October 20, 2005. The applicant, on behalf of the current owner, is trying to address the dwelling encroachments (approximately 30 years old), "AS-BUILT", within one of the property's minimum 8 feet side and attendant minimum 4 feet side yard opens space and remove non-permitted building additions within the (south) side yard and front yard identified on the variance site plan map and variance background report.

The applicant, on behalf of the current owner, filed the variance request and application to address or resolve the building encroachment issues. The variance site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS-BUILT", on the subject TMK property. It appears that a small portion of the dwelling's footprint or living area and roof eave constructed in 1975 (along the north side boundary line) was built outside the building site area or building envelope into one of the property's 2-side yards and attendant open yard space pursuant to the Hawaii County Zoning Code. It appears that building inspections by the agencies during construction of the original dwelling circa 1975 did not disclose any building encroachment issues or building irregularities. According to the applicant, any non-permitted building additions built after 1975 within the property's minimum front yard and (south) side yard will be removed. (Refer to Variance Permit Conditions).

ALTERNATIVES

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

1. Removing the existing building encroachments or redesigning or relocating the affected dwelling and eave to fit within the correct building envelope prescribed by the zoning designation and Zoning Code.

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2. Consolidation of the subject TMK property with adjoining lots or property and resubdivision of the resultant consolidated property into revised lots to modify property lines and adjustment of minimum yards and affected open yard space requirements.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines. In addition, the subject TMK property was created before the adoption of the County Zoning Code in 1967. The property's land area (4,213 square feet) and 50 feet width are non-conforming.

The 2-story dwelling was built circa 1975 pursuant to a building permit issued by the County. Given the metes and bounds of the non-conforming sized property and building permit history, the small "Dwelling" encroachments within property's (north) side yard are not physically noticeable or visually obtrusive from adjacent property(s) or Manini Beach Road. It appears that the 30 + year old or original dwelling improvements built into the property's (north) side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land pattern. (The non-permitted building improvements or building additions within the subject TMK property's (south) side yard and front yard will be demolished and removed).

Therefore, it is felt that these building encroachments within the affected minimum side yard and attendant side yard open space 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 November 28, 2005. Additional time to consider agency comments and complete the variance background report was deemed necessary. The applicant agreed to extend the date on which the Planning Director shall 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 variance 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 a 2-story dwelling or residence will not meet Chapter 25, the Zoning Code's minimum (north) side yard and side yard open space requirements according to the variance application's site plan map prepared and signed by a RPLS and dated October 20, 2005. The approval of this variance allows the two story residence or 1975 dwelling encroachments within the property's affected (north) side yard to remain, "AS BUILT", pursuant to the variance application's site plan map.

The non-permitted building improvements or building additions (2-lean-to-style roofs, lanai trellis, etc.) built after 1975 within the TMK property's (south) side yard and front yard and described by the applicant in the variance application's background report shall be removed by the current owner or applicant prior to the any sale of the property or within 60 days from the date of the variance permit letter.

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 building improvements and permitted uses on the subject tax map key property are subject to State law, County ordinances, and SMA 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 - Kona