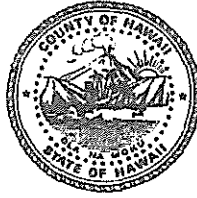


Harry Kim
Mayor



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 12, 2006

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

Dear Mr. Conventz:

SUBJECT: VARIANCE PERMIT-VAR 05-103
Applicant: KLAUS D. CONVENTZ
Owners: TONY V. LORENZO TRUST, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 7-8-007:062, Lot 1

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 05-103 subject to variance conditions. The variance permits portions of a 1-story dwelling to remain on Lot 1, "AS-BUILT", with a minimum 21.6 feet rear yard and attendant minimum 17.2 feet rear yard open space in lieu of minimum 25.00 feet front yard and 19.00 feet side yard open space requirements, according to the variance site plan map dated October 4, 2005. Portions of an existing garage or "lean-to-style shed roof" or "roof overhang" identified on the variance site plan map will be removed. The variance is from the TMK property's minimum rear yard and attendant rear yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards (1), 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 1 containing 0.509 acre, being a portion of Royal Patent No. 4430 Land Commission Award No. 7428 to Kaihe, is situated at Keauhou 1, North Kona, Hawaii. The property's street address is 78-6868 Mamalahoa Highway.

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The property is zoned Residential and Agricultural (RA-.5a) by the County and designated Rural or "R" by the Land Use Commission (LUC). Ohana Dwelling Permit (OD 88-84) was issued to subject TMK property to allow construction of "Additional Single Dwelling" on May 6, 1988.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about November 21, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Blaine W. Ito, RPLS. The variance site plan map, dated October 4, 2005, denotes portions of a "Hse" or ohana dwelling were constructed within minimum 20 feet rear yard and attendant minimum 14 feet rear yard open space of "LOT 1" or subject TMK property.

The applicant's background states in part:

"The improvements were built under Permit No. 385, issued May 8, 1973 for the main house, and No. 793362, issued November 19, 1979, and Building Permit No. 896516 in 1989 for the Ohana dwelling.

Undersigned advised new owner to permanently remove the substandard lean-to style shed roofs North and West attached to the carport/garage in the center of the property and detached from both dwellings, and to complete and initiate a building permit application for the mentioned detached carport. The removal of the roof overhangs of the carport will automatically take out the encroachments into the northerly side yard setback."

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 stonewall, wire fence, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Recent County building records show 1-Building Permit (896516), 1-Electrical Permit (E905304), and 1-Mechanical (M905740) or Plumbing Permit were issued to construct the ohana dwelling on "Lot 1" or subject TMK property. The ohana dwelling on "LOT 1" was built pursuant to a building and associated construction permits issued 1989 and 1990. County records indicate the building permit and associated construction permits were finalized or "closed".

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4. **Agency Comments and Requirements-VAR 05-103:**
 - a. The State Department of Health (DOH) memorandum dated April 4, 2006 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The Department of Public Works (DPW) memorandum dated April 5, 2006 states in part:

"We reviewed the subject application and have no comments or objections."
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 November 21, 2005 and March 17, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 2006.
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 the property's minimum rear yard and attendant minimum rear yard open space. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling(s) and other site improvements on "Lot 1", "AS BUILT". It appears that 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 the dwelling encroachments to be built into the property's affected rear yard and attendant rear yard open space.

It appears that the "ohana" dwelling improvements was built on the subject TMK property pursuant to a building permit and other associated construction permits issued to previous owners. It appears that during construction of the ohana dwelling between 1989 and 1990, the

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dwelling encroachment into the property's rear yard and attendant rear yard open space 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. The applicant or current owners will secure a building permit for the detached garage and remove encroachments within property's affected side yard.
2. Consolidation of Lot 1 with the adjoining property (TMK: 7-8-007:033) 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 17 years ago within the minimum rear and attendant minimum rear yard open space are not physically and/or visually obtrusive from the adjacent property (TMK:7-8-007:033) or rights-of-way (Kuakini Highway). It appears that these 17 +/- year old building encroachments into the property's 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 rear 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 March 10, 2006 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 to May 15, 2006.

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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

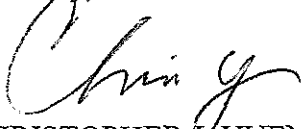
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 ohana dwelling located on "Lot 1" will not meet the property's minimum rear yard and attendant rear yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated October 4, 2005. The approval of this variance permits the ohana dwelling or mauka "Hse" improvements to remain on "Lot 1", "AS BUILT", on the subject TMK property according to the variance site plan map October 4, 2005.

The applicant or current owner(s) shall secure a building permit for detached garage building identified on site plan map dated October 4, 2005.

4. Future or new building improvements on "Lot 1" (e.g, detached garage) and permitted uses shall be subject to State law and County ordinances and regulations pertaining to minimum yards, 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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dba Baumeister Consulting
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xc: Real Property Tax Office-Kona