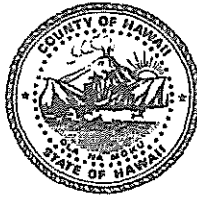


Harry Kim
Mayor



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 05-111
Applicant: KLAUS D. CONVENTZ
Owner: L. KAY GUFFY REVOCABLE LIVING TRUST
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 6-8-025:022, Lot 22

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 05-111 subject to variance conditions. The variance permits portions of a 1-story dwelling/garage to remain on Lot 22, "AS-BUILT", with a minimum 19.6 feet rear yard and minimum 19.7 feet front yard and attendant minimum 11.7 feet front yard open space in lieu of minimum 20.00 feet front and rear yard and minimum 14.00 feet front yard open space requirements, according to the variance site plan map dated December 21, 2005. The variance is from the TMK property's minimum front/rear yard(s) and attendant front yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A), 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, containing 12,589 square feet, is Lot 22 of Sunset Ridge at Waikoloa, Phase I (File Plan 1957), being a portion of Royal Patent 5671, L.C. Award 8521-B, Apana 1 to G.D. Hueu, and situated at Waikoloa, South Kohala, Hawaii. The property's street address is 68-2779 Pohakala Place.

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The property is zoned Single Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about December 28, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates. The variance site plan map, dated December 21, 2005, denotes portions of the "1-Story House/Garage" were built within the minimum 20-foot rear yard and minimum 14-foot front yard open yard space of "LOT 22" or subject TMK property.

The applicant's background states in part:

"Owner was unaware of any problems when a setback survey conducted by Wes Thomas Associates on December 21, 2005 revealed the encroachments, while the property is in escrow for conveyance."

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 Wall, "Wire Mesh Fence", and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Pursuant to the applicant's background information, County building records indicate that 1-Building Permit (882443), 1-Electrical Permit (E895061), and 1-Mechanical (M895106) or Plumbing Permit were issued to "LOT 22" or (previous bulk lot-TMK property. It appears that the "1-Story House/Garage" or building improvements constructed on "LOT 22" were built pursuant to these building and associated construction permits issued in 1988 and 1989; and, the building and associated construction permits were closed or "finaled" by the DPW.

4. **Agency Comments and Requirements-VAR 05-111:**

- a. The Department of Public Works (DPW) memorandum dated March 16, 2006 states in part:

1. Building shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum

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from our Building Division).”

The attached Building Division memorandum dated March 14, 2006 states in part:

“We oppose the approval of the application for the reasons noted below.

“Others: Incorrect Tax Map Key Number with Building Permit 882443.”

- b. 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.”
- 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 December 28, 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. The following objection letter(s) were received:
 - 6a. Letter(s) dated December 30, 2005 and March 20, 2006 from Glenn P. Davis.

Note: Chapter 25, Zoning, does not regulate or enforce Waikoloa Village Association restrictions regarding dwelling location or private recorded deed covenants, conditions, and restrictions.

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 minimum front and rear yards. The variance application’s site plan map was prepared by a surveyor and denotes the location of the “1-Story House/Garage” and other site improvements, “AS BUILT”, on “LOT 22”. The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the original developer or builders to deliberately create or

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intentionally allow these building encroachments to be built within the Lot 22's minimum rear yard and minimum front yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permits and other associated construction permits issued to Lot 22 by the DPW or subject TMK property. It appears that during construction of the dwelling improvements between 1988 and 1989 the dwelling encroachment within the property's rear yard and front 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.
2. Consolidation of Lot 22 with adjoining lot (TMK: 6-8-028:029, Lot 29) and Right-of-Way 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 16 + years ago within the minimum yards are not physically and/or visually obtrusive from the adjacent property (Lot 29) or right-of-way (Pohakala Place). It appears that these 16 + 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 property's minimum 20-foot rear yard and minimum 14-foot front 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.

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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

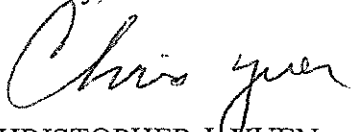
This variance request is approved subject to the following conditions:

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 located on "LOT 22" will not meet the property's minimum rear yard and minimum front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 21, 2005. The approval of this variance permits the "1-Story House/Garage" improvements to remain on "LOT 22", "AS BUILT", according to the variance site plan map dated December 21, 2005.
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

WRY:mad
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xc: Real Property Tax Office-Kona
Glenn P. Davis