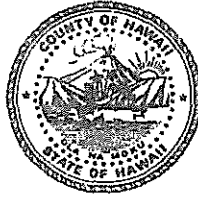


Harry Kim
Mayor



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 05-112
Applicant: KLAUS D. CONVENTZ
Owners: MARK G. HENRIQUES, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 7-7-016:020, Lot 39

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 05-112 subject to variance conditions. The variance permits portions of a 1-story dwelling/lanai(s)/roof eave to remain on Lot 39, "AS-BUILT"; with a minimum 4.7 feet to minimum 6.0 feet side yard and attendant minimum 3.0 feet side yard open space in lieu of minimum 8.0 feet side yard and minimum 4.0 feet side yard open space requirements, according to the variance site plan map dated and signed December 19, 2005. Portions of the dwelling's eave along the affected side boundary line will be removed to meet building code or UBC requirements. The variance is from the TMK property's minimum side yard and attendant side yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

MAY 19 2006

BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 9,529 square feet, is Lot 39 of Kona Seaview Lots, Increment 4 (File Plan 1048), and situated at Holualoa 4th, North Kona, Hawaii. The property's street address is 77-6533 Sea View Circle.

The property is zoned Single Family Residential (RS-7.5) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not abut the shoreline.

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 KKM SURVEYS. The variance site plan map, dated December 19, 2005, denotes portions of the "Dwelling" and "Lanai(s)/Eave" were constructed within the property's minimum 8 foot side (west) yard and attendant minimum 4 foot side yard open space of "LOT 39" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1970 under Building Permit No. 42594, with three additions (front and rear decks, and rec. room) under Permit Nos. 3035, 42955 and 52699.

Owners were unaware of any problems when a setback survey conducted by KKM-Surveys on December 19, 2005 revealed the encroachments, while the property is subject to escrow procedure 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, Dry Stack Rock Wall, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 4-Building Permits (H42594, H42955, H52699, K03035), 1-Electrical Permit (EH30040), and 1-Mechanical (MH14108) or Plumbing Permit were issued to subject TMK property. It appears that the

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dwelling, lanai and associated site improvement on "LOT 39" were built pursuant to these building and associated construction permits issued between 1969 and 1978.

4 **Agency Comments and Requirements-VAR 05-112:**

- a. The Department of Public Works (DPW) memorandum dated March 17, 2006 states in part:

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

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

3 ft. side, 3 ft. rear

Others: Building Permit H52699 has not been finalized."

- b. The State Department of Health (DOH) memorandum dated March 17, 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. 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 8 feet side (west) yard and attendant minimum 4 feet side yard open space. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling/lanais/eave and other site improvements on "LOT 39", "AS BUILT". The current owners became aware of building encroachment issues during escrow. 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 property's affected side yard and attendant minimum side yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 4-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1969 and 1978, the dwelling encroachment within one of the property's side (west) yard 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.
Note: The applicant's background report states in part, "consultant advised the owners to cut back the roof back to a minimum 3.0 ft. at extreme Northwest corner of the main house, and owner agrees to do so." (Refer to variance Conditions).
2. Consolidation of Lot 39 with adjoining lot (TMK:7-7-004:043, Lot 3-A-1) and resubdivision to modify property lines or adjust minimum yards.

INTENT AND PURPOSE

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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 26-37 years ago within the minimum side (west) yard are not physically and/or visually obtrusive from the adjacent property (Lot 3-A-1) or right-of-way (Sea View Circle). It appears that these 37 +/- year old building encroachments into the property's minimum side (west) 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 property's affected 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 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.

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/lanai(s)/eave located on "LOT 39" will not meet the minimum side yard and attendant minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 19, 2005. The approval of this variance permits the "Dwelling/Lanai(s)/Eave" improvements to remain on "LOT 39", "AS BUILT", according to the variance site plan map dated December 19, 2005.

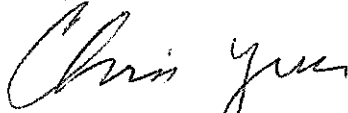
The applicant or current owners shall address the status of Building Permit-BP No. H52699 issued to subject TMK property by the DPW-Building Division. This active or "open" building permit issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before September 30, 2006 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.

In addition, the applicant or current owner(s) shall modify or remove roof "Eave" along the affected side boundary line to meet minimum 3.0 feet side yard open yard space or County Building Code or UBC Code prior to sale of the property or transfer of title of the property by 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.

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