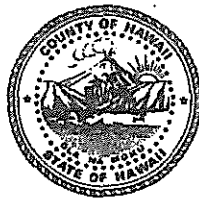


Harry Kim
Mayor



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 31, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-018

Applicant: KLAUS D. CONVENTZ
Owners: CLIFTON D. WALTERS, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards

Tax Map Key: 7-7-021:099, Lot 99

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 06-018 subject to variance conditions. The variance permits portions of a 2-story dwelling/lanai/roof eave to remain on Lot 99, "AS-BUILT", with a minimum 18.33 feet to minimum 19.65 feet front yard and attendant minimum 11.35 feet front yard open space, in lieu of the minimum 20.00 feet front yard and minimum 14.00 feet front yard open space requirement. The variance is from the TMK property's minimum front yard and attendant minimum front 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)(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 15,307 square feet, is Lot 99 of "Komohana Kai, Unit III", File Plan No. 1737, Grant No. 1591, and situated at Holualoa 3rd, North Kona, Hawaii. The TMK property's street address is 77-6360 Halawai Place.

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The property is zoned Single-Family Residential (RS-15) 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 February 21, 2006 to the 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, signed and dated August 9, 2004, denotes portions of the "TWO STORY RESIDENCE" was built within the 20.00 feet front yard(s) of "LOT NO. 99" or subject TMK property.

The applicant's background dated January 20, 2006 states in part:

"The dwelling was built in 1991 by predecessors under Building Permits 895866 (dwelling) and 915103 (addition).

While the property was in escrow at the time for conveyance to the current owner Walters, a survey was conducted just before close of escrow on August 9, 2004.

The funds for a setback variance application were left in escrow, and the Walters were unaware that the application had not been completed until now.

Previous owners were not aware of the encroachments either until the AS-BUILT survey was conducted on August 9, 2004 by Pattison Land Surveying, INC (sic)."

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 walls, chain link fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

(ID County building records show 2-Building Permits (895866, 916103), 1-Electrical Permit (E915130), and 2-Mechanical (M906246, M945339) or Plumbing Permits were issued to subject TMK property. It appears that the dwelling on "LOT NO. 99" were built pursuant to 2-building permits and associated construction permits issued between 1989 and 1994.

4. **Agency Comments and Requirements-VAR 06-018:**

- a. The Department of Public Works (DPW) memorandum dated April 18, 2006 states in part:

"Building shall conform to all requirements of code and statutes pertaining to building construction (see attached memorandum from our Building Division).

The attached DPW-Building Division memorandum states in part:

"We opposed the approval of the application for the reasons noted below.

Others: Building Permit 915103 does not correspond with subject dwelling mentioned."

- b. The State Department of Health (DOH) memorandum dated April 18, 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 February 21, 2006 and April 3, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 7, 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 a minimum 20.00 feet front yard(s) and attendant minimum 14.00 feet front yard open space (along Lako Street). The variance application's site plan map was prepared by a surveyor and denotes the location of the "TWO STORY

RESIDENCE" and other site improvements, "AS BUILT", on "LOT NO. 99". 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 2-front yards and attendant front yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1989 and 1994, the dwelling encroachment within the property's 2-front yards 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 NO. 99" with the respective Rights-of-Ways 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 property's minimum front yard(s) are not physically and/or visually obtrusive from the adjacent properties or Rights-of-Way (Lako Street and Halawai Place). It appears that these 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 affected front yard(s) and attendant front yard open space (along Lako Street) 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 29, 2006 and additional time to complete the variance background report and consider agency comments was

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necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance to June 2, 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 located on "LOT NO. 99" will not meet the minimum front yard(s) pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated August 9, 2004. The approval of this variance permits the "TWO STORY RESIDENCE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 99" according to the variance site plan map signed and dated August 9, 2004.

The applicant or current owners shall confer with the DPW-Building Division (Kona) to confirm the building permits issued to the TMK property were closed or "finaled" by the DPW. The building permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division 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.

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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

WRY:pak
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xc: Real Property Tax Office-Kona

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