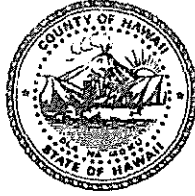


Harry Kim
Mayor



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

July 6, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-020

Applicant: KLAUS D. CONVENTZ
Owner: ROMOLO IANNIELLO
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 7-3-046:136, Lot 23

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 06-020 subject to variance conditions. The variance to allows portions of a 2-story dwelling/carport/swimming pool/privacy CRM wall to remain on Lot 23, "AS-BUILT", with a minimum 18.1 feet side (north) yard and minimum 18.4 feet to minimum 19.7 feet side (south) yard in lieu of minimum 20.00 side yards according to the variance site plan map signed and dated February 21, 2006. The variance is from the TMK property's minimum side yard(s) pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property containing 43,562 square feet, is Lot 23 of Kona Acres, Unit II, Increment B, File Plan 1551, and situated at Ooma 1st, North Kona, Hawaii. The TMK property's street address is 73-4400 Paiaha Street.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about February 28, 2006 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, signed and dated February 21, 2006, denotes portions of the "Dwelling/Carport/Storage/Pool/CRM Wall" were built within the subject TMK property's minimum 20 feet side yards of "LOT 23".

The applicant's background report dated February 21, 2006 states in part:

"The residence was built in 1979 under Building Permit No. 782337 for the dwelling, and Building Permit No. 025060 for the swimming pool built in 2002.

The owner was unaware of any problem when a survey conducted by KKM-Surveys on February 21, 2006 revealed the encroachments while the property is in escrow for conveyance of ownership to Mr. and Mrs. Jack Wagner."

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 wire and chain link fencing, shed (situated on adjoining property-TMK: 7-3-046:196, Lot 22), and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (782337, 025060), 2-Electrical Permits (EH51501, E025134), and 1-Mechanical (MK02209) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling, pool, and related building improvements on "LOT 23" were built pursuant to these building and associated construction permits issued in 1978 and 2002.

- 4 **Agency Comments and Requirements-VAR 06-020:**

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

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

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The attached copy of DPW memorandum dated April 17, 2006 states in part:

"Approval of the application shall be conditioned on the comments as noted below."

"The minimum setbacks shall be maintained as follows:
3 ft. side, 3 ft. rear"

"Others: Storage shed of (sic) adjoining lot 22 shall meet minimum set back requirements as mentioned (sic)"

- b. The State Department of Health (DOH) memorandum dated April 19, 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 24, 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 or about 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/pool encroachments within a minimum side yard(s). The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, pool, and other site improvements, "AS BUILT", on "LOT 23". 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 minimum side yards.

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It appears that the existing dwelling improvements and swimming pool improvements were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements built circa 1978 and swimming pool/wall improvements built circa 2002 within the property's side 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 23 with adjoining lot(s) (TMK: 7-3-046:135, Lot 22 and TMK: 7-3-046:137, Lot 24) 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 these building encroachments constructed approximately 28 or 14 years ago within the property's minimum 20 feet side yards are not physically and/or visually obtrusive from the adjacent property(s) or rights-of-way (Paiaha Street/Homestead Road). 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 within the property's minimum 20 feet side yards 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 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.

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 2-story dwelling/carport/swimming pool/privacy CRM wall on "LOT 23" will not meet the property's minimum side yard requirements pursuant to Chapter 25, the Zoning Code, according to the variance site plan map signed and dated February 21, 2006. The approval of this variance permits existing improvements to remain, "AS BUILT", on the subject TMK property or "LOT 23" according to the variance site plan map and survey report dated February 21, 2006. (The position of the "shed" on adjoining property-Lot 22 shall be addressed by the owner(s) of Lot 22 and the "shed eaves" encroaching into subject TMK property (Lot 23) shall be removed).

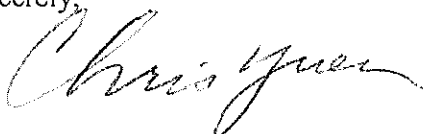
The applicant or current owner shall address the status of "open" Building Permit-BP No. 025060 issued to subject TMK property. This active or "open" building permit shall be closed or "finaled" by the DPW-Building Division (Kona) on or before October 31, 2006 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.

4. 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,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-Kona