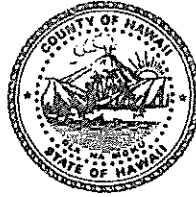


Harry Kim
Mayor



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 06-021

Applicant: KLAUS D. CONVENTZ
Owners: MICHAEL CROLIUS, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 7-1-006:088, Lot 35

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-021 subject to variance conditions. The variance permits portions of a retaining wall/above grade swimming pool to remain on Lot 35, "AS-BUILT", with a minimum 24.52 feet to minimum 25.22 feet rear yard in lieu of the minimum 30.00 feet rear yard required according to variance site plan map signed and dated February 28, 2006. The variance is from the TMK property's minimum rear yard 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 1.031 acres, is Lot No. 35, "Puu Lani Ranch-Phase II", File Plan No. 2241, Grant No. 6147 to Kalani Nakupuna, and situated at Puuanahulu, North Kona, Hawaii. The TMK property's street address is 71-1796 Puu Lani Drive.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

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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 was prepared by Pattison Land Surveying, Inc. and is signed and dated February 28, 2006. The site plan map is drawn to scale and denotes portions of a "POOL" attached to "LANAI/SINGLE STORY RESIDENCE" was built within the property's minimum 30 feet rear yard of "LOT NO. 35".

The applicant's background report dated February 27, 2006 states in part:

"The residence was built in 2003 under Building Permit No. 026636, with pool addition built under Building Permit No. 036485.

The owner was unaware of any problem until a survey conducted February 24, 2006 by Pattison Land Surveying, INC. (sic) revealed the encroachments while the property is in escrow for conveyance.

It appears from the undersigned's site inspection findings that the contractor committed a clear misinterpretation of the codes, more precise setbacks vs. clear space regulations."

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 any fencing (Barbed Wire), and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (026636, 036485), 2-Electrical Permits (E035927, E036765), and 1-Mechanical (M030661) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and swimming pool on the subject TMK property were built pursuant to building and associated construction permits issued in 2002 and 2003.

4. **Agency Comments and Requirements-VAR 06-021:**

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

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"We reviewed the subject application and we have no comments or objections."

In addition, the attached copy of a DPW memorandum dated April 17, 2006 states in part:

"We have no comments or objections to the application."

- 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 28, 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 the property's minimum 30 feet rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, swimming pool, and other site improvements, "AS BUILT", on "LOT NO. 35". 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 rear yard.

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 swimming pool improvements between 2003 and 2004, the swimming pool encroachment within the property's minimum rear yard went unnoticed.

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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. 35 with adjoining property TMK: 7-1-004:018 (Zoned "Open" by the County and designated Conservation or "C" by the SLUC) 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 portions of the swimming pool were constructed approximately 3 years ago within the minimum rear yard are not physically and/or visually obtrusive from the adjacent property(s) or right-of-way (Puu Lani Drive). It appears that the pool's position on the property does not depreciate or detract from the character of the surrounding neighborhood or surrounding land patterns. Therefore, it is felt that these swimming pool encroachments into the property's minimum 30 feet rear yard 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:

Mr. Klaus D. Conventz
dba Baumeister Consulting

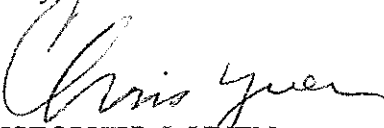
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1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against 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 "POOL" on "LOT NO. 35" will not meet the property's minimum 30 feet rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "POOL" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 35" according to the variance site plan map signed and dated February 28, 2006.
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.

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:cd

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xc: Real Property Tax Office-Kona