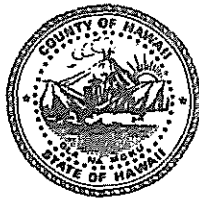


Harry Kim
Mayor



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 25, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-029

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

Tax Map Key: 6-8-005:034, Lot 91

After reviewing your application and the information submitted, the Planning Director certifies the approval Variance Permit-VAR 06-029 subject to variance conditions. The variance permits portions of a 1-story dwelling/garage/lanai to remain on Lot 91, "AS-BUILT", with a minimum 19.4 feet rear yard in lieu of the minimum 20.00 feet rear yard. The variance is from the TMK property's minimum rear yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A).

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property containing 14,670 square feet is Lot 91 of Waikoloa Village Unit 1-A, File Plan 1188, and situated at Waikaloa, South Kohala, Hawaii. The TMK property's street address is 68-1765 Laie Street.

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 March 28, 2006 to the Kona

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Planning Department. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, dated March 23, 2006, denotes portions of the "Dwelling" were built into the property's minimum 20.00 feet rear yard of "LOT 91" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 2000 under Building Permit Nos. 995242 for the dwelling and 996032 for an addition.

The owner was unaware of any problem when a setback survey conducted February 3, 2006 by KKM-Surveys 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 any walls, wooden fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (995242, 996032), 1-Electrical Permit (E995463), and 1-Mechanical (M995449) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling improvements on "LOT 91" were built pursuant to these building and associated construction permits.

4 **Agency Comments and Requirements-VAR 06-029:**

- a. The State Department of Health (DOH) memorandum dated May 1, 2006 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated May 1, 2006 states in part:

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

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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 March 28, 2006 and April 17, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 19, 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 rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the Dwelling/Eave/Lattice Overhang" and other site improvements, "AS BUILT", on "LOT 91". 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 affected rear yard.

It appears that the existing dwelling improvements and subsequent dwelling 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 constructed circa 1999, the dwelling encroachment within the property's rear 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.
2. Consolidation of Lot 91 with adjoining lot (TMK: 6-8-005:037, Lot 94) 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

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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 7 years ago within the minimum rear yard are not physically and/or visually obtrusive from the adjacent property (Lot 94) or right-of-way (Laie Street). It appears that these 7 +/- year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. According to the applicant, the "Shed" or "typical doll-house" denoted on the site plan within the property's 20-foot rear yard will be demolished or removed by the owner(s). Therefore, it is felt that the dwelling encroachments into the property's rear yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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 91" will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated March 23, 2006. The approval of this variance permits the dwelling improvements to remain, "AS BUILT", on the subject TMK property or "LOT 91" according to the variance site plan map dated March 23, 2006.

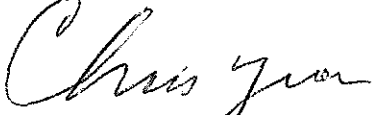
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The applicant and/or current owners will demolish or remove the "Shed" located within the property's rear yard and identified on the variance site plan map on or before September 30, 2006 or prior to sale of the property to others.

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

WRY:pak

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xc: Real Property Tax Office-Kona