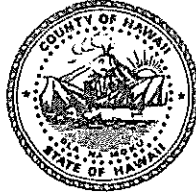


Harry Kim
Mayor



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 3, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-036

Applicant: KLAUS D. CONVENTZ
Owner: DARLENE TURNER HICKEY
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-7-015:023, Lot 51

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-036 subject to variance conditions. The variance permits portions of a 2-story dwelling to remain on Lot 51, "AS-BUILT", with a minimum 6.43 feet to minimum 6.96 feet side yard and attendant minimum 3.64 feet to minimum 3.02 feet side yard open space in lieu of the minimum 8.00 feet side yard and attendant minimum 4.00 feet side yard required. The variance is from the TMK property's minimum side yard 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).

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property containing 7991 square feet, is Lot 51 of "KONA SEA VIEW LOTS", being a portion of Royal Patent No. 1289, Land Commission Award No. 7228 to Loe, and situated at Holualoa 4th, North Kona, Hawaii. The property's street address is 77-6563 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.

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about May 2, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and was prepared by Pattison Land Surveying, Inc. The variance site plan map, signed and dated April 10, 2006, denotes portions of the "TWO STORY RESIDENCE" on "LOT NO. 51" was built within the subject TMK property's minimum 8 feet side yard and minimum 4 feet clear space.

The applicant's background report dated April 16, 2006 states in part:

Page 1: "The dwelling was built in 1967 under Building Permit No. 36505 by one of various predecessors.

The owner was unaware of any problem until a setback survey conducted April 10, 2006 by Pattison Land Surveying INC. (sic) revealed the encroachments while the property is subject to escrow procedure for conveyance."

Page 2: "Consultant advised, and owner agrees that the shed structure into the rear yard setback shall be removed permanently."

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 rockwalls, wooden fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

According to the applicant the dwelling improvements were constructed on the subject TMK property in 1967. It appears that the 2-story dwelling on "LOT NO. 51" was constructed on the property nearly 40 years ago.

4. **Agency Comments and Requirements-VAR 06-036:**

- a. The State Department of Health (DOH) memorandum dated May 30, 2006 states:

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

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- b. The Department of Public Works (DPW) memorandum dated May 19, 2006 states in part:

“We reviewed the subject application and our comments are as follows:

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

The attached copy of the DPW memorandum dated May 18, 2006 states in part:

“We oppose the approval of the application for the reasons noted below.

Others: SUBJECT STORAGE SHED WAS BUILD WITH OUT A BUILDING PERMIT(sic)” Note: According to the applicant, the un-permitted storage shed will be removed. Refer to variance conditions.

- 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 April 17, 2006 and May 17, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 18, 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 8 feet side 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 “TWO STORY RESIDENCE” and other site improvements, “AS BUILT”, on “LOT NO. 51”. The current owners became aware of building encroachment issues “after they purchased the property”. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow portions of the dwelling to be built within the property's minimum side yard and attendant minimum side yard open space.

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It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permit to subject TMK property circa 1967. It appears that during construction of the dwelling circa 1967 the dwelling encroachment within the property's minimum 8 feet side yard and attendant minimum 4 feet side yard open space 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 51 with adjoining lot (TMK: 7-7-015:024, Lot 52) 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 39 years ago within the affected side yard are not physically and/or visually obtrusive from the adjacent property (Lot No. 52) or right-of-way (Sea View Circle). It appears that these 39 +/- year old dwelling encroachments into the property's minimum side yards 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 affected side yard and 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 un-permitted shed within the property's rear yard will be removed.

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. 51" 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 signed and dated April 10, 2006. The approval of this variance permits the "TWO STORY RESIDENCE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 51" according to the variance site plan map.

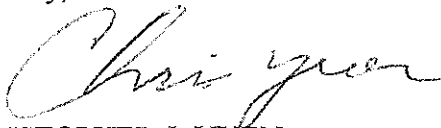
The applicant or owner(s) shall demolish or remove the "STORAGE SHED" denoted on the variance site plan map on or before September 30, 2006. The storage shed shall be removed prior to sale of the property or transfer of title to others.

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.

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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,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-Kona