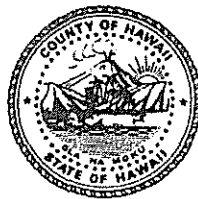


Harry Kim
Mayor



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 17, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-043

Applicant: KLAUS D. CONVENTZ
Owners: ROBERT L. BYRNE, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 8-1-023:024

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-043 subject to variance conditions. The variance to allow portions of a dwelling and open storage shed to remain on referenced TMK property, "AS-BUILT". The variance is to allow the dwelling to remain with a minimum 17.83 feet to 18.65 side yard and attendant minimum 13.86 feet side yard open space and allow open storage shed to remain with a minimum 19.37 feet side yard in lieu of a minimum 20.00 feet side yard(s) and attendant minimum 14.00 feet side yard open space from the affected boundary line(s) according to the variance site plan map signed and dated May 8, 2006. The variance is from the property' minimum 20.00 feet side yard and minimum 14.00 feet side yard open space required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, 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, consisting of approximately 5.827 acres, being a portion of Royal Patent No. 4386 and No. 7532, Land Commission Award No. 8452, Apana 10 to A. Keohokaole, is situated at Kaawaloa, South Kona, Hawaii. The property's street address is 81-1073 Captain Cook Road.

The property is zoned Agricultural (A-20a) 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 May 18, 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 is signed and dated May 8, 2006 denotes portions of the "TWO STORY RESIDENCE" and "OPEN STORAGE SHED" were built within minimum 20 foot side yard(s) of "LOT H-23 UNIT A" or subject TMK property.

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

"Subject dwelling was built in 1990 under Building Permit No. 896615, with an additional garage (detached) under Building Permit No. 8751 and swimming pool under Building Permit No. 906431 in 1990 as well.

Owners were unaware of any problems when a survey conducted by Thomas Pattison Land Surveying, INC. revealed the encroachments on May 8, 2006 while the subject Unit A 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 CRM wall(s), wire fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 3-Building Permits (K08751, 896615, 906431), 3-Electrical Permits (E885012, E905890, E915042), and 2-Mechanical (MK06857, M905021) or Plumbing Permit were issued to subject TMK property. It appears that the subject dwelling "ohana dwelling" and other improvements on the subject TMK property were constructed pursuant to these building permits and associated construction permits issued between 1988 and 1991. (Note: Records indicate the dwelling was allowed to be constructed on the subject TMK property pursuant to Ohana Dwelling Permit (OD 88-39) dated March 18, 1988).

4 **Agency Comments and Requirements-VAR 06-043:**

- a. The State Department of Health (DOH) memorandum dated June 13, 2006 states:

"Wastewater Branch has no objections to the project. However, information on existing wastewater system locations were (sic) not shown on the drawings and we are unable to provide comments. Please have your engineer identify the location of all wastewater systems and their relationship to existing and/or proposed property lines to make sure they meet the minimum distances required per Hawaii Administrative Rules, Chapter 11-62."

- b. The Department of Public Works (DPW) memorandum dated June 14, 2006 states in part:

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

- 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 May 17, 2006 and June 5, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 8, 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 20 feet side yard(s) and attendant minimum 14 feet side yard open space. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling/eaves and other site improvements, "AS BUILT", on "LOT H-23 UNIT A". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the owner(s) or builders to deliberately create or intentionally allow these building encroachments to be built within the property's minimum 20 feet side yard.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
July 17, 2006

It appears that the dwelling/eave improvements and open shed building 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 and other building improvements between 1988 and 1991, the dwelling and shed encroachment within the property's minimum side yards and attendant minimum 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 H-23 Unit A with adjoining lot(s) 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 dwelling/eave and shed encroachments constructed within the minimum side yard(s), respectfully, are not physically and/or visually obtrusive from the adjacent property(s) or rights-of-way. It appears that the 15 + year old building encroachments on the subject TMK property do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the portions of the dwelling/eave and shed constructed into the property's affected side yard(s) and attendant minimum side yard open space identified on the variance application's site plan map and survey report 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

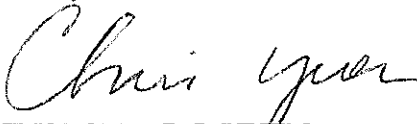
This variance request is approved subject to the following conditions:

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
July 17, 2006

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 and shed located on "LOT H-23 UNIT A" will not meet the minimum 20 feet side yard (s) and attendant minimum 14 feet side yard open requirements per space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report dated May 8, 2006 and May 12, 2006, respectively. The approval of this variance permits the "TWO STORY RESIDENCE" (including the roof eaves) and "OPEN STORAGE SHED" improvements to remain, "AS BUILT", on the subject TMK property or "LOT H-23 UNIT A" according to the variance site plan map and survey report.
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

P:\WP60\WRY\FORMLETT\VAR06-043ZCSETBACK\TMK81023024.BC

xc: OD 88-39 (File)
Real Property Tax Office-Kona