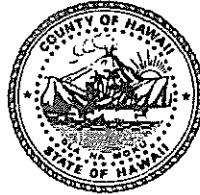


Harry Kim
Mayor



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 20, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-044

Applicant: KLAUS D. CONVENTZ
Owners: JAMES R. SUTHERLAND, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 7-7-019:022, Lot 22

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-044 subject to variance conditions. The variance to allow portions of a "Dwelling" to remain on Lot 22, "AS-BUILT", with a minimum 17.9 feet front yard in lieu of a minimum 20.00 front yard according to the variance site plan map signed and dated May 19, 2006. The variance is from the Lot 22's minimum front yard required by 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 10,255 square feet, is Lot 22 within Kuakini Heights, Unit II, and situated at Laaloa 2nd, North Kona, Hawaii. The property's street address is 77-358 Mele Place.

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 May 22, 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 May 19, 2006, denotes portions of the "Dwelling" were built within a minimum 20 feet front yard of "LOT 22" or subject TMK property.

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

"The dwelling was built in 1978 under Building Permit No. 02751 with subsequent additions under Permit Nos. 006639 and, with the latest addition in 1997 under No. 976017.

The owners were unaware of any problem until a setback survey conducted May 19, 2006 by KKM Surveys revealed the encroachment while the property is subject to escrow procedure for conveyance."

In addition, the applicant addressed the shed's position on the subject TMK property. The report further states:

"The shed along the northeasterly boundary and inside the attendant side yard setback is rather insubstantial, barely over 6.0 ft. high; however, based on undersigned's advice the owners intend to remove the shed permanently."

Note: The variance site plan map does not identify or denote location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of any CRM Walls, Retaining Walls, and any fencing improvements or landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 3-Building Permits (K02751, K06639, 976017), 2-Electrical Permits (EK02287, E985030), and 1-Mechanical (MK01876) or Plumbing Permit were issued to subject TMK property. It appears that the "Dwelling" on "LOT 22" was built pursuant to these building and associated construction permits issued between 1978 and 1998.

4. **Agency Comments and Requirements-VAR 06-044:**

- a. The Department of Public Works (DPW) memorandum dated June 15, 2006 states in part:

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

The applicant shall remove any encroachments or obstructions within the County right-of-way." (Refer to variance conditions).

- b. The State Department of Health (DOH) memorandum dated June 22, 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 May 22, 2006 and June 15, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 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 20 feet front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "Dwelling" and other site improvements, "AS BUILT", on "LOT 22". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected minimum front yard.

It appears that the existing dwelling improvements and subsequent dwelling 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 improvements between 1978 and 1998, the dwelling encroachment (including the walls) within the property's front 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 22 with the right-of-way fronting the property 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 28 years ago within the minimum 20 feet front yard are not physically and/or visually obtrusive from the respective rights-of-way (Ainanani Street or Mele Place). It appears that these 28 year old 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 dwelling encroachments into the affected front 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 22" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated May 19, 2006. The approval of this variance permits the "Dwelling" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 22" according to the variance site plan map.

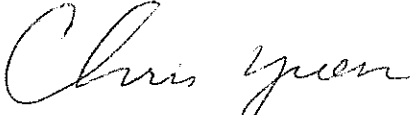
The applicant or current owners shall confer with the DPW to discuss the position of CRM wall or wall improvements constructed within the publicly owned right-of-way and identified on the variance site plan map. The status of any rock wall improvements within the road right-of-way shall be addressed and/or removed by the current owners prior to the sale of the subject TMK 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:ld

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xc: Real Property Tax Office-Kona