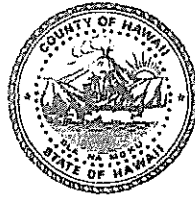


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Panahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

February 6, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 06-084

Applicant: KLAUS D. CONVENTZ

Owner: PETER INSALACO

**Request: Variance from Chapter 25, Zoning,
Minimum Yards**

Tax Map Key 8-2-009:089, Lot 57

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-084 subject to variance conditions. The variance permits portions of a "SINGLE STORY RESIDENCE" to remain on Lot 57, "AS-BUILT", with minimum 27.58 feet rear yard and attendant minimum 21.68 feet rear yard open space and "Open Shed" to remain, "AS-BUILT", with minimum 10.74 feet to minimum 18.00 +/- feet rear yard/rear yard open space in lieu of minimum 30.00 feet rear yard and minimum 24.00 feet rear yard open space according to the variance application's site plan map signed and dated October 12, 2006. The variance is from the TMK property's minimum rear yard and attendant minimum rear yard open space required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), 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, Lot 57 containing 43,579 square feet of "McCOY PLANTATION SUBDIVISION", being a portion of Grant 5420 to Harry T. Mills, Land Commission Award 226-B, Apana 1 to Keko, and situated at Kalamakowali Homesteads, South Kona, Hawaii. The subject property's street address is 82-932 Manini Street.

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

2. **Variance Application-Site Plan.** The applicant, on behalf of the owner, submitted the variance application, attachments, and filing fee on or about October 23, 2006. The variance application's site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc. The site plan map was dated and signed on October 13, 2006 and denotes portions of the "SINGLE STORY RESIDENCE" and "Open Shed" were built into the property's minimum 30 feet rear yard and attendant minimum 14 feet rear yard open space of "LOT NO. 57" or subject TMK property.

The applicant's background states in part:

"Peter Insalaco purchased the property by Deed on April 9, 1999, recorded in the Bureau of Conveyances of the State of Hawaii under Document No. 99-054482.

The dwelling was built by predecessor under Building Permit No. 905908, issued June 29, 1990, with subsequent Building Permits for swimming pool and alterations, Nos. 995969, 9959970, both issued August 30, 1999, and further alteration(s) under Building Permit No. 005187, issued February 8, 2000.

Owner was unaware of any problem until a survey, conducted by Pattison Land Surveying, INC. on October 12, 2006, revealed the encroachments while the property is in escrow for conveyance.

It appears that predecessor's contractor committed an honest staking error; no malice and intent could be substantiated during undersigned's site inspection, nor would owner or his contractor have benefited from such violation in any way."

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 CRM walls, wood fencing, and landscaping, etc. along or straddling common boundary lines. (Refer to variance conditions).

Site Inspection. The applicant requested a site inspection to inspect the building design, age, and condition of the "Open Shed" improvements and dwelling/roof eave encroachment within the property's rear yard. Photographs of the dwelling's eave and open shed taken during the January 31, 2007 site inspection appear to indicate the open shed or "potting shed" identified on the variance site plan map was designed and built concurrently with the original dwelling improvements circa 1990-1992. During inspection of the original dwelling improvements by the agencies in the early 1990s, the dwelling/roof eave encroachment and the "potting shed" or "Open Shed" building improvements built without a permit went unnoticed by the agencies in the early 1990s. According to the applicant, the current owner was not aware of the dwelling /roof eave encroachment within the property's rear yard or other permitting issues related to the open potting shed when he purchased the property in 1999.

3. **County Building Records:**

County records show 4-Building Permits (905908, 995969, 995970, 005187), 2-Electrical Permits (E905805, E995933), and 3-Mechanical (M905775, M995781, M995967) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and other site improvements on "LOT NO. 57" were built pursuant to these building and associated construction permits issued to a previous owner and current owner between 1990 and 2000.

4. **Agency Comments and Requirements-VAR 06-084:**

- a. The Department of Public Works (DPW) memorandum dated November 14, 2006 states:

"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 applicant shall remove any encroachments or obstructions within the County right-of-way."

The above referenced "attached memorandum" states in part the following:

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

The building permit for the subject dwelling was never finalized. BP 995969 and 995970 are still active.

Others: Open Shed as identified on Pattison Land Surveying Site Plan was built without permits."

- b. The State Department of Health (DOH) memorandum dated November 27, 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 October 23, 2006 and November 14, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 14, 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 owner, submitted the variance application to address or resolve the dwelling and open "potting" shed encroachments constructed within the property's minimum 30 feet rear yard and attendant minimum 24 feet rear yard open space required by the Zoning Code. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, open shed, and other site improvements, "AS BUILT", on "LOT NO. 57". The current owners became aware of dwelling/roof eave and open shed encroachment within the property's minimum rear yard after a 2006 survey and map of the property was completed during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow the dwelling/roof eave and open shed to be built into the property's minimum rear yard and minimum rear yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 4-building permits and other associated construction permits issued to subject TMK property between 1990 and 2000. It appears that during construction of the dwelling improvements between 1990 and 2000, the dwelling/roof eave encroachment including the open shed within the property's minimum 30 feet rear yard and attendant minimum 24 feet rear yard open space went unnoticed by the agencies.

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 portions of the dwelling and open shed to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot No. 57 with adjoining narrow lot (TMK: 8-2-009:016) 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 that the original dwelling and open shed improvements were built and completed circa 1990-1992 before the current owner purchased the property in 1999. The 16 year old dwelling improvements and open shed's improvements constructed within the property's rear yard are not physically and/or visually obtrusive from the adjacent property or right-of-way (Manini Street). It appears that the dwelling/roof eave encroachments and open shed encroachment into the property's minimum rear yard do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the dwelling/roof eave and position of the open shed within the property's minimum 30 feet rear yard and attendant minimum 24 feet rear yard open space denoted 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 November 6, 2006 and additional time to schedule a site inspection to verify the condition and age of roof encroachment and shed improvements and complete the variance background report was necessary.

The applicant submitted additional photographs of existing dwelling and shed improvements and granted the Director an extension of time to render a decision on the variance application to February 15, 2007.

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 a dwelling and an open shed constructed on the property prior to 1999 located on "LOT NO. 57" will not meet the minimum rear yard and attendant minimum rear yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated October 12, 2006. The approval of this variance permits the "SINGLE STORY RESIDENCE" and "Open Shed" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 57" according to the variance site plan map.

The applicant or current owner shall contact the DPW-Building Division-Kona to "final" or "close" active "open" building permits (995969 and 995970) issued to the subject TMK property; and, secure a building permit for the "Open Shed" denoted on the variance site plan map. The "open" building permits related to the dwelling improvements and/or building permit for the "Open Shed" shall be addressed and/or closed or "finalized" by the DPW-Building Division prior to June 30, 2007.

Mr. Klaus D. Conventz
dba Baumeister Consulting

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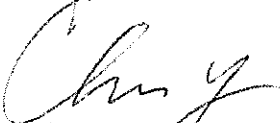
February 6, 2007

The applicant or current owner shall contact the DPW-Engineering Division-Kona to identify the encroachments or obstructions within the County owned right-of-way fronting the subject TMK property. Any encroachments or obstructions within the County owned right-of-way shall be removed by the applicant/current owner at the discretion of the DPW-Engineering Division.

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:cd

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xc: Real Property Tax Office-Kona