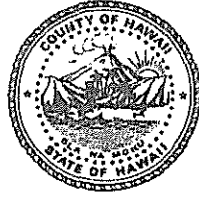


Harry Kim
Mayor



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

March 1, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-002

Applicant: KLAUS D. CONVENTZ
Owner: LEILANI LEWIS REVOCABLE TRUST
**Request: Variance from Chapter 25, Zoning,
Minimum yards**

Tax Map Key: 6-5-007:067, Lot 4

After reviewing subject variance application, the Planning Director certifies the approval of Variance-07-002 subject to variance conditions. The variance permits portions of a "HOUSE" to remain on Lot 4, "AS-BUILT", with minimum 17.67 feet front yard and attendant minimum 15.40 feet front yard open space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard open space according to the variance application's site plan map dated May 8, 2006. The variance is from the TMK property's minimum front yard and attendant minimum front 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 containing 11,742 square feet, being Lot 4, Kamuela Skyline Subdivision, is situated at Waimea, South Kohala, Hawaii.

The property is zoned Agricultural (A-1a) 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 to the Kona Planning Department on January 25, 2007. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, dated May 8, 2006, denotes portions of the "HOUSE" were constructed into the property's minimum 20 feet front yard of "LOT 4" or subject TMK property.

The applicant's background states in part:

"The dwelling was built under Building Permit No. 783045 issued November 29, 1978, and Building Permit No. 783161 for the garage, issued December 6, 1978, with two (2) additions under Nos. 812240 and 830777, issued September 8, 1981 and May 26, 1983 respectively; a Building Permit No. 035251 for a solar system was issued on February 27, 2003.

Owner was unaware of any problems, until a survey, conducted by "The Independent Hawaii Surveyors, LLC" on May 8, 2006, revealed the encroachment while the property is in escrow for conveyance.

It appears that the predecessor owner's contractor committed an honest staking error; there is no other explanation. No malice and intent could be substantiated during the 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 walls, fencing, driveway, and landscaping, etc. on the property or along or straddling common boundary lines.

3. **County Building Records:**

Real Property Tax Office records indicate 5-Building Permits (783045, 783161, 812240, 830777, 035251), 4-Electrical Permits (EH59221, EH61992, EH62034, E035349), and 3-Mechanical, (MH35689, M006164, M035218) or Plumbing Permits were issued to subject TMK property. It appears that the original "HOUSE" and other additions including wooden decks/solar, etc. were built on "LOT 4" pursuant to these building permits and other associated construction permits issued between 1978 and 2003.

4 **Agency Comments and Requirements-VAR 07-002:**

- a. The State Department of Health (DOH) memorandum is dated January 25, 2007. (Refer to DOH memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum dated January 26, 2007 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 Building Division’s memorandum dated January 25, 2007 states in part:

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

The building permit for the subject dwelling was never finalized (sic). E035349, M006164 AND M035218.”

- 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 January 8, 2007 and January 25, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 25, 2007.
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.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, submitted the variance application to address or resolve the dwelling encroachment into the property's minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE" improvements, "AS BUILT", on "LOT 4". The current owner 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 property's front yard.

It appears that the original 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 2003, the dwelling encroachment within the property's front yard went unnoticed by the builders and 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 the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 4 with adjoining road right-of-way (Paepuu Place) 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 front yard are not physically and/or visually obtrusive from the adjacent property (s) or right-of-way (Paepuu Place). Therefore, it is felt that these dwelling improvements constructed circa 1978 into the property's minimum front yard identified on the variance application's site plan map can remain, "AS-BUILT" and do not detract from the character of the immediate neighborhood or the subdivision.

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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 "HOUSE" or dwelling improvements located on "LOT 4" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 8, 2006. The approval of this variance permits the "HOUSE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 4" according to the variance site plan map in the subject variance file.

The applicant or current owner shall contact the Kona DPW-Building Division to address and complete the "open" electrical and mechanical permit(s), E035349, M006164, and M035218 issued to subject TMK property. These active or "open" construction permits shall be closed or "finaled" by the DPW-Building Division on or before June 30, 2007 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.

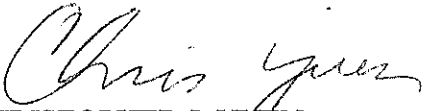
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.

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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