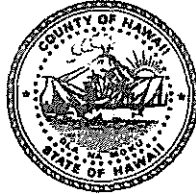


Harry Kim
Mayor



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

May 18, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-014

Applicant: KLAUS D. CONVENTZ
Owners: RANDALL B. FARISH, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 7-8-020:006, Lot 21

After reviewing your variance application, the Planning Director certifies the approval of VAR 07-014 subject to variance conditions. The variance permits portions of existing "TWO STORY RESIDENCE" including garage, wood deck, and eaves to remain on Lot 21, "AS-BUILT" with minimum 18.87 feet front yard to minimum 19.99 feet front yard and attendant minimum 9.58 feet to minimum 11.54 feet front yard open yard space in lieu of the property's minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space requirements along Heeia Way according to the variance application's survey map (Revised) dated and signed on March 7, 2007. 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 1, Section 25-5-7, Minimum yards, (a)(2)(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 21 containing 10,300 square feet of "KEAUHOU SUBDIVISION", Area 5, being a portion of Royal Patent 4476, L.C. Award 7713, Apana 7 to V. Kamamalu, is situated at Keauhou 1st, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on February 26, 2007 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(s), signed and dated February 12, 2007 and March 7, 2007, denotes a portion of the "TWO STORY RESIDENCE" and attendant "EAVE LINE" are within the property's minimum 20 feet front yard along Heeia Way of the subject TMK property or "LOT NO. 21".

The applicant's background report dated February 24, 2007 states in part:

"The building was built under Building Permit No. 03945, issued October 9, 1979 with an addition/alteration under Building Permit No. 006351, issued September 20, 2000.

Owners were unaware of any violation until a survey conducted by Pattison Surveys revealed the encroachment on February 12, 2007, while the property is in escrow subject to conveyance."

Note: The variance site plan map(s) does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location(s) or position of CRM walls, wood fence/metal gate, and landscaping, etc. on Lot No. 21 or straddling common boundary lines shared with adjoining Lot No. 20 and Lot No. 22.

In view of the variance site plan map signed and dated February 12, 2007, the (CRM) wall encroaching "1.28 feet" into "County Road" were removed or relocated on subject TMK property according to variance site plan map signed and dated March 7, 2007.

3. **County Building Records:**

Real Property permit records show 2-Building Permits (K03945, 006351), 2-Electrical Permits (EK03501, E006253), and 1-Mechanical (M006122) or Plumbing Permit were issued to subject TMK property. It appears that the 2-story dwelling and other site improvements on the subject TMK property were built on "LOT NO. 21" pursuant to building permits and associated construction permits issued between 1979 and 2007.

4. **Agency Comments and Requirements-VAR 07-014:**

- a. The State Department of Health (DOH) memorandum dated March 30, 2007 states in part:

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

- b. The Department of Public Works (DPW) memorandum dated March 8, 2007, states in part:

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

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

The DPW memorandum dated May 8, 2007 states:

"We have reviewed the subject map dated March 7, 2007 by Pattison Land Surveying, Inc. and have determined that there are no longer any encroachments in the County Right of Way. If you have any questions please contact Mr. Kiran Emler of our Kona office at 327-3530."

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 February 26, 2007 and March 5, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 10, 2007 and March 20, 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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments into the property's 20 feet front yard along Heeia Way. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling and site improvements, "AS BUILT", on "LOT No. 21". The current owners became aware of building encroachment issues during escrow.

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The Building Permit to construct the original 2-story dwelling was issued in 1979 and completed in 1980. No evidence has been found to show indifference or premeditation by previous owners or builders in 1979 to deliberately create or intentionally construct the encroachments into the property's front yard and attendant minimum front yard open space along Heeia Way.

It appears that the original dwelling improvements constructed circa 1979 and other subsequent additions or improvements were built according to 2-building permits and associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1979 and 1980, the dwelling and roof eave encroachment into the property's front yard along Heeia Way 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 portions of the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of "LOT NO. 21" the right-of-way (Heeia Way) 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 and roof eave encroachment constructed approximately 27 + years ago into the minimum 20 feet front yard and attendant minimum 14 feet front yard open space are not physically and/or visually obtrusive from adjoining properties or right-of-way (Heeia Way). It appears that these 27+ year old building encroachments into the affected front yard do not depreciate or detract from the character of the surrounding neighborhood; and, therefore, it is felt that these dwelling and roof eave 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.

The subject variance application was acknowledged by letter dated February 28, 2007 and additional time was requested by the applicant to confer with the DPW and verify the location of the rock walls along the property's front boundary. The applicant requested the Planning Director to defer decision on the subject variance application to May 21, 2007.

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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 "TWO STORY RESIDENCE" including affected roof eaves located on "LOT NO. 21" will not meet the minimum front yard and attendant minimum front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map prepared by PATTISON LAND SURVEYING, INC. The approval of this variance permits the "TWO STORY RESIDENCE" or 2-story dwelling and associated roof eave improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 21" according to the revised variance site plan map signed and dated March 7, 2007.
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

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xc: Real Property Tax Office-Kona