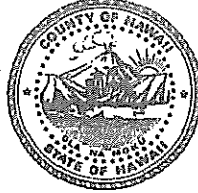


Harry Kim
Mayor



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

June 29, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-034

Applicant: KLAUS D. CONVENTZ
Owner: DAVID F. STONE
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 9-2-136:009, Lot 25

After reviewing your variance application, the Planning Director certifies the approval of VAR 07-034 subject to variance conditions. The variance permits portions of the "SINGLE STORY HOUSE" with a minimum 16.06 feet to minimum 19.99 feet side yard and portion of detached "WATER CATCHMENT TANK (4 FEET HIGH)" with a minimum 18.58 feet side yard to remain on the property, respectively, "AS-BUILT", in lieu of the property's minimum 20.00 feet minimum side yard according to variance application's site plan map signed and dated April 24, 2007. The variance request is from property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 25 containing 43,604 square feet, is within Block 261 of Hawaiian Ocean View Estates, File Plan 787, and situated at Kahuku, Kau, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" 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 to the Kona Planning Department on April 30, 2007. The variance application's site plan map was prepared by a surveyor and is drawn to scale. The variance site plan map, signed and dated April 24, 2007, denotes portions of the "SINGLE STORY HOUSE" and detached "WATER CATCHMENT TANK (4 FEET HIGH)" were built into a minimum 20 foot side yard of "LOT 25" or subject TMK property.

The applicant's background states in part:

Page 1. "The dwelling was built under Building Permit No. B2006-1509H, issued June 13, 2006 with final inspection of February 01, 2007 (sic). Owner was unaware of any problem, until a survey, conducted by Don McIntosh on April 24, 2007, revealed the encroachments while the property is in escrow for conveyance.

It appears that the contractor committed an honest staking error, easily explained by the moonscape-like rugged and huge lava flows, with enormous ridges dissecting the property. From no position on the land any corner stake can visually be lined up for staking.

The only somewhat straight and perceptible line in location is the general outline of the road, which was obviously used for staking and footprint lay-out."

Page 2. "The encroachments are visually not perceptible from neighbor lots or public view, and are limited to the extreme Northeast corner of the home, while the eaves are in compliance. An additional, however, miniscule encroachment is found at the catchment tank with 1.42 feet or 17 inches, the tank being in addition less than 4.0 feet high.

It should be pointed out that in this part of the subdivision the house pads are cut out of lava flows, creating some kind of niches for the homes. Most right next door neighbors can't even see the other neighbors' homes hidden in those lava flow cutouts since they are separated in numerous cases by high lava ridges and gulches."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does show the position of any land features and/or landscaping, etc. improvements (refer to photographs in variance file) within the property or along or straddling common boundary lines.

3. **County Building Records:**

Real Property building permit records show 1-Building Permit (B2006-1509H), 1-Electrical Permit (E2006-2033K), and 1-Mechanical (M2006-1689K) or Plumbing Permit were issued to subject TMK property. It appears that the single story dwelling and detached water catchment tank on "LOT 25" was built pursuant to the building permit and associated construction permits issued in 2006.

4. **Agency Comments and Requirements-VAR 07-034:**

- a. The State Department of Health (DOH) memorandum is dated June 14, 2007. (Refer to DOH memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum and application comment is dated June 19, 2007 and states:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** Affidavits and proof of sending notices to surrounding property owners were submitted to the Planning Department. According to the affidavits, the first notice and second notice were sent to surrounding property owners on April 30, 2007 and May 28, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 31, 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 owner, submitted the variance application to address or resolve the dwelling encroachments built into a minimum side (easterly) yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the 1-story dwelling and detached water catchment tank (4 feet high), "AS BUILT", on "LOT 25". The current owner became aware of building encroachment issues within the property's side yard during escrow. No evidence has been found to show indifference or premeditation by the owner or builders to deliberately create or intentionally allow the building encroachments to be built within the affected side yard.

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dba Baumeister Consulting

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It appears that the dwelling and detached 4 feet high water catchment tank improvements on the property were constructed and completed according to a building permit and associated construction permits issued to subject TMK property in 2006. It appears that during construction of the dwelling and water tank improvements between 2006 and early 2007, small portions of the dwelling and detached water tank built into a minimum 20 feet side 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 and detached water catchment tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 25 with adjoining lot (TMK: 9-2-136:008, Lot 26) 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 portions of the 1-story dwelling and detached water catchment tank (4 feet height) were recently built into the property's minimum side (easterly) yard are not physically and/or visually obtrusive from the adjacent property (Lot 26) or privately owned right-of-way (Ocean View Parkway). It appears that these building encroachments into the property's side yard do not depreciate or detract from the character of the surrounding neighborhood; and therefore, it is felt that these small encroachments into the property's affected side 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.

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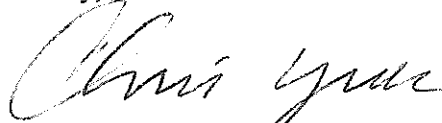
PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

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 1-story dwelling and detached water catchment tank (4 feet high) on "LOT 25" will not meet the minimum side pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated April 24, 2007. The approval of this variance permits the "SINGLE STORY HOUSE" and "WATER CATCHMENT TANK (4 FEET HIGH)" to remain, "AS BUILT", on "LOT 25" or subject TMK property according to the variance application's site plan map or survey map signed and dated April 24, 2007.
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

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xc: Real Property Tax Office-Kona