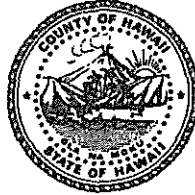


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

August 16, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-041

Applicant: KLAUS D. CONVENTZ
Owner: DERINDA L. THATCHER TRUST
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 7-8-017:015, Lot 19

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-041 subject to variance conditions. The variance permits portions of a 2-story dwelling and attached deck and covered lanai and attendant roof eaves to remain on Lot 19, "AS-BUILT", with a minimum 12.3 feet front yard to minimum 20.00 feet front yard and attendant minimum 8.9 feet to minimum 10.3 feet front yard open space and minimum 15.7 feet to minimum 18.9 feet rear yard and attendant minimum 13.1 feet to minimum 14.00 feet rear yard open space in lieu of required minimum 20.00 feet front yard, minimum 20.00 feet rear yard, and attendant minimum 14.00 feet front yard and minimum 14.00 feet rear open yard space requirements according to the variance application's survey map signed and dated May 10, 2007. The variance is from the TMK property's minimum front yard, minimum rear yard, and attendant minimum front yard open space and minimum rear yard open space requirements 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 referenced TMK property, Lot 19 containing 10,553 square feet, of Land Court Application 1740, is situated at Keauhou 1st, North Kona, Hawaii. The referenced TMK property's street address is 78-604 Ihilani Street.

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The property is zoned Single-Family Residential (RS-15) by the County and designated Agriculture or "A" 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 June 7, 2007. The variance application's site plan map was prepared by KKM SURVEYS and is signed and dated May 10, 2007. The variance site plan map, drawn to scale, denotes portions of the "2 Story Dwelling" including attached "Deck/Eave" were built into the minimum 20 feet rear yard and minimum 20 feet front yard of "LOT 19" or subject TMK property.

The applicant's background report dated June 7, 2007 states in part:

"The dwelling received on October 07, 1999 Building Permit No. 996163 for the residence, with an addition under Building Permit No. 026714 issued December 16, 2002.

Owner was unaware of any violation until survey conducted by KKM-Survey, revealed on May 10, 2007 the encroachments.

Owner considers sale of the property and prepares for the due diligence performance by seller, which typically includes an "AS-BUILT" survey."

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 landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County Real Property building records show 2-Building Permits (996163, 026714), 2-Electrical Permits (E005114, E035236), and 2-Mechanical (M005237, M035073) or Plumbing Permits were issued to subject TMK property. It appears that the 2-story dwelling including attached deck and attendant roof eaves on "LOT 19" were built pursuant to these building and associated construction permits issued between 1999 and 2002.

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4. **Agency Comments and Requirements-VAR 07-041:**
 - a. The State Department of Health (DOH) memorandum dated July 9, 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 July 10, 2007 states in part:

"We reviewed the subject application and have no comments or objections."
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 sent (mailed) on June 7, 2007 and July 7, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 6, 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 within the property's minimum front and minimum rear yards. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling including attached deck/roof eaves and other site improvements, "AS BUILT", on "LOT 19". 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 affected yards.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1999 and 2002, the dwelling and deck/eave encroachments within the property's front yard and rear yard went unnoticed by the builders and agencies.

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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 19 with adjoining lot (TMK: 7-8-017:013, Lot 16/Right-of-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 encroachments constructed or completed approximately 5 to 8 years ago within the property's minimum front yard and minimum rear yard are not physically and/or visually obtrusive from the Right-of-Way (Ihilani Place) or adjoining property (Lot 16). It appears that these building encroachments into the property's minimum yards do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the dwelling encroachments into the property's minimum front yard and minimum rear yard including minimum open yard spaces 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 June 28, 2007 and additional time to incorporate agency comments and complete the variance background report was necessary. The applicant agreed to an extension of time to complete the variance background report and render decision on subject variance application to on or before August 17, 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:

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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 "2-Story Dwelling" and attached "Deck/Eave" located on "LOT 19" will not meet the minimum front yard and minimum rear yard including attendant minimum front yard and rear yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the 2-Story Dwelling/Deck/Eave improvements to remain, "AS BUILT", on the subject TMK property or "LOT 19" according to the variance site plan map signed and dated May 10, 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.

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