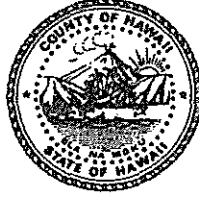


Harry Kim
Mayor



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

December 14, 2007

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

Dear Mr. Conventz:

VARIANCE-VAR 07-063

Applicant: KLAUS D. CONVENTZ
Owner: CHRIS DE ANDA
Request: Variance from Chapter 25, Zoning,
Minimum yards
Tax Map Key: 8-3-013:045, Lot 12

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 07-063 subject to variance conditions. The variance allows permits portions of a "Dwelling" with minimum 12.8 feet side yard and attendant minimum 9.4 feet to 9.5 feet side yard open space and attached "CARPORT/STORAGE" with minimum 14.8 feet side yard, respectively to remain on subject TMK property or Lot 12, "AS-BUILT", in lieu of the property's minimum 20.00 feet minimum side yards and minimum 14.00 feet side yard open space 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, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 12 containing 22,727 square feet, being a portion of R.P. 1663, L.C. Aw. 5524, Ap. 5 to Konia, and situated at Keei 2nd, South Kona, Hawaii.

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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 submitted the variance application, attachments, and filing fee on September 7, 2007. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated June 22, 2006, denotes portions of the "Dwelling" and attached "Carport" were built within minimum 15 feet side yards of "LOT 12" or subject TMK property.

The applicant's background states in part:

"Subject dwelling was built in 1971 under Permit No. 44255 issued March 24, 1970, with additional repairs to dwelling under Building Permit No. 01657 issued February 18, 1976.

Predecessor Robert L. and Cynthia A. Dixon were unaware of any problems when a survey conducted by KKM Surveys revealed the encroachments on May 08, 2006 while the property was in escrow for conveyance. Undersigned applied on June 26, 2006 for a variance, which was withdrawn when successor Chris De Anda decided to remodel the home. However, Chris De Anda's plans to revised the footprint, and take care at the same time of the encroachments, did not come to fruition due to severe changes affecting his life.

He is obligated to provide the solution as initiated already by the Dixsons before and reapply for variance while the property is in escrow for conveyance.

From undersigned's site inspection it appears that the predecessor owner, his designer and the County already overlooked that dwelling and carport/storage closet could not have property positioned on the property inside the setback envelope; no evidence of malice or intent could be substantiated, nor would owner at the time, or his contractor, have benefited from such violation in any way."

Note: The variance request does not address the location or position of Rock/CRM walls, "Chain Link Fence", utilities, and any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County Real Property records indicate the dwelling and attached carport was constructed circa 1971. It appears that the 36 year old dwelling and attached carport on "LOT 12" was originally built pursuant to building and associated construction permits issued to the subject TMK property.

4. **Agency Comments and Requirements-VAR 07-063:**

- a. The State Department of Health (DOH) memorandum is dated October 12, 2007. Refer to DOH memorandum in variance file.
- b. The Department of Public Works (DPW) memorandum dated October 17, 2007 states in part:

"We have reviewed the subject application and have no comments or objections."

5. **Notice to Surrounding Property Owners.** The applicant submitted a list of surrounding property owners and copy of notices sent to surrounding property owners to the Planning Department. According to the submittals, the first notice and second notices were mailed on September 7, 2007 and October 8, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 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 and carport encroachments within the property's minimum side yards. The variance application's site plan map denotes the location of the dwelling and attached carport including roof eaves, "AS BUILT", on "LOT 12". The current owner became aware of building encroachment issues during escrow in 2006. No evidence has been found to show indifference or premeditation by previous owners or builders circa 1970 or 1971 to deliberately create or intentionally allow these building encroachments to be built within the affected side yards.

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It appears that the dwelling including carport were built and completed between 1970 and 1971. It appears that portions of the dwelling and attached carport constructed into the property's side yards went unnoticed by the previous owners/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 12 with adjoining lots (TMK: 8-3-013:041, Lot 10 and/or TMK: 8-3-013:038, Lot 14) 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.

Pursuant to County Real Property and other permit records, the dwelling including carport was permitted and built approximately 36 years ago upon subject TMK property. It appears that portions of the 36 year old dwelling and attached carport built within the affected side yard are not physically and/or visually obtrusive from adjacent property-Lot 10 or adjacent property-Lot 14, respectively or privately owned right-of-way fronting the property. It appears that these building 36 year old encroachments within the property's affected side yards do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt portions of the 36 year old dwelling and attached carport within the property's 15 foot side yards 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 September 27, 2007 and additional time to incorporate agency comments was necessary. The applicant agreed to an extension of time to complete the variance background report and granted the Planning Director an extension of time to render a decision on the subject variance to December 21, 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

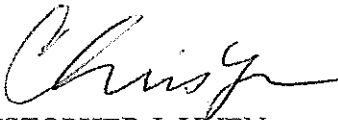
This variance request is approved subject to the following conditions:

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 the dwelling and attached carport located on "LOT 12" will not meet the minimum side yards pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated June 22, 2006. The approval of this variance permits the "Dwelling" and attached "Carport" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 12" according to the variance site plan map signed and dated June 22, 2006.
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

WRY:cd
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xc: Real Property Tax Office-Kona