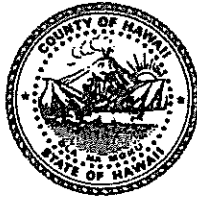


Harry Kim
Mayor



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

April 10, 2008

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

Dear Mr. Conventz:

VARIANCE-VAR 08-006

Applicant: KLAUS D. CONVENTZ

Owner: RUTH E. ROBINSON

**Request: Variance from Chapter 25, Zoning,
Minimum yards**

Tax Map Key: 7-5-029:041, Lot 120

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-006 subject to variance conditions. The variance allows portions of a 2-story "Dwelling" including roof eave or portions of "Eave" to remain, "AS-BUILT", upon Lot 120 with minimum 8.4 feet rear yard in lieu of minimum 15.0 feet rear yard and attendant minimum 5.9 feet rear yard open space in lieu of minimum 10.0 feet rear yard open space requirement according to survey map signed and dated January 15, 2008. The variance is from the referenced TMK property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 120 containing 8446 square feet, Kaloko Heights Subdivision, Increment II, File Plan 1077, and situated at Hienaloli 5th, North Kona, Hawaii. The referenced TMK property's street address is 75-5776 Waiola Place.

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The property is zoned Agricultural (A-5a) 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 on January 28, 2008. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated January 15, 2008, denotes portions of a "Dwelling" and associated roof or "Eave" was built into the property's minimum 15 feet rear yard of "LOT 120" or subject TMK property.

The applicant's background information dated January 27, 2008 states in part:

"The residence was built under Building Permit No. 04384, issued June 05, 1980.

Owner was unaware of any violation until survey conducted by KKM Surveys, revealed on January 15, 2008 the encroachment, while the property is subject to escrow procedure for conveyance."

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 CRM walls, wire fence, and landscaping, etc. upon or along or straddling property's boundary lines or upon County right-of-way.

3. **County Building Records:**

Hawaii County Real Property Tax Office permit records show 1-Building Permit (K04384), 1-Electrical Permit (EK03874), and 1-Mechanical (MH33028) or Plumbing Permit were issued to subject TMK property. It appears that the "Dwelling" upon "LOT 120" was built pursuant to these building and associated construction permits issued in 1980.

4. **Agency Comments and Requirements-VAR 08-006:**

- a. The Department of Public Works (DPW) memorandum dated February 14, 2008 states in part:

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

The applicant shall remove any encroachments or obstructions within the County right-of-way."

- b. The State Department of Health (DOH) memorandum dated February 15, 2008 states:

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

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and affidavits regarding mailing notices to the Planning Department. According to the affidavits, the first and second notices were sent or mailed by US Mail to surrounding property owners on January 28, 2008 and February 15, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 13, 2008.
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 owner(s), submitted the variance application to address or resolve the dwelling encroachments within the subject TMK property's minimum rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "Dwelling" and "Eave" and other site improvements, "AS BUILT", on "LOT 120". The current owner became aware of building encroachment issues after the survey map was prepared for 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 into the subject TMK property's rear yard.

It appears that the existing dwelling improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property nearly 28 years ago. It appears that during construction of the dwelling and eave improvements in 1980, a portion of the dwelling constructed into the property's rear yard went unnoticed by the builders and agencies.

ALTERNATIVES

Alternatives available to the applicant or owner(s) to address and correct the existing building encroachments within the property's minimum rear yard include the following actions:

1. Remove the "Dwelling" encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 120 with adjoining property (TMK: 7-5-010:066) 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 a triangular shaped portion of "Dwelling" including "Eave" constructed approximately 28 years ago into subject TMK property's minimum rear yard and attendant minimum rear yard open space is not physically and/or visually obtrusive from the adjacent property or County owned right-of-way (Waiola Place). It appears that the 28 year old dwelling encroachment into subject TMK property's rear yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the 28 year old portion of "Dwelling" and attendant roof eave or "Eave" constructed into the subject TMK property's minimum 15 feet rear yard and minimum 10 feet rear yard open space identified by variance application's site plan map will not detract from the character of the immediate neighborhood or subdivision.

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The subject variance application was acknowledged by letter dated February 4, 2008 and additional time to consider DPW comments to the variance application was necessary. The applicant granted the Planning Director a time extension to render decision on the variance application to April 11, 2008.

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

The variance application or VAR 08-006 is approved subject to following variance 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 attendant roof eaves or "Eave" upon "LOT 120" will not meet the property's minimum rear yard and attendant minimum rear yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated January 15, 2008. The variance permits the "Dwelling" including "Eave" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 120" according to variance site plan map dated January 15, 2008.

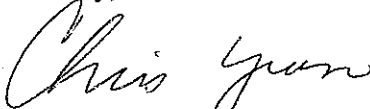
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Pursuant to DPW memorandum dated February 14, 2008, the applicant or current owner shall contact the DPW-Engineering Division (Kona) to identify and/or remove "any encroachments or obstructions within the County right-of-way" prior to sale of the property or transfer of title by the current owner to new owner(s).

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 variance conditions not be complied with, the Planning Director may proceed to declare Variance-VAR 08-006 to be null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-Kona