

Harry Kim
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County of Hawaii

PLANNING DEPARTMENT

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Should be 2008...just sayin'

April 29, 2006

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

Dear Mr. Conventz:

VARIANCE-VAR 08-014

Applicant: KLAUS D. CONVENTZ
Owners: WILLIAM D. BOSWELL, JR., ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 7-6-012:106, Lot 6

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-014 subject to variance conditions. The variance allows portions of "1-Story Dwelling" and attached "Garage" to remain upon Lot 6, "AS-BUILT", with minimum 12.8 feet to minimum 14.9 feet side yard in lieu of minimum 15.00 feet side yard according to variance application's site plan or survey map signed and dated February 20, 2008. The variance is from the property's minimum side yard(s) pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, (2).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 6 containing 22,761 square feet, is within "IO VIEW ESTATES II", and situated at Holualoa 1 and 2, North Kona, Hawaii. The referenced TMK property's address is 76-854 Kualua Place.

The property is zoned Residential and Agricultural (RA-5a) by the County and designated Rural or "R" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant, on behalf of the owners, submitted a variance application, attachments, and filing fee on March 3, 2008. The variance application's site plan map is drawn to scale and prepared by KKM SUVEYS. The variance site plan map, signed and dated February 20, 2008, denotes portions of the "1-Story Dwelling" and attached "Garage" were built into a minimum 15 feet side yard of "LOT 6" or subject TMK property.

The applicant's background information dated February 29, 2008 states in part:

"The residence was built in 2002 under Building Permit No. 016446, with an alteration of solar system under Building Permit No. 025280, a retaining wall under Building Permit No. 026272, the addition of swimming pool under Building Permit No. 026274, and spa under Building Permit No. B2007-0989. All Building Permits have received final inspections.

PLEASE NOTE: On October 31, 2001 the Planning Director granted in lieu of two (2) fronts, due to special and unusual circumstances, one (1) front along the cul-de-sac, as well as one (1) rear yard setback (East). See enclosed approved site plan in original copy.

Owners were unaware of any violation until survey conducted by KKM Surveys, revealed on February 20, 2008 the encroachments."

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 CRM walls, "Propane Tank", "Water Feature", and landscaping, etc. near or along easement lines or boundary lines shared with adjoining property.

3. **County Building Records:**

Hawaii County Real Property Tax Office permit records show 5-Building Permits (016446, 025280, 026272, 026274, B2007-0989K), 6-Electrical Permits (E016643, E025329, E026104, E035375, E035912, E2007-1183K), and 2-Mechanical (M016254, M025182) or Plumbing Permits were issued to subject TMK property. It appears that the 1-story dwelling and attached garage improvements upon "LOT 6" were constructed and completed pursuant to building permits and associated construction permits issued between 2001 and 2007.

4. **Agency Comments and Requirements-VAR 08-014:**

- a. The State Department of Health (DOH) memorandum dated March 27, 2008 states:

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

- b. The Department of Public Works (DPW) memorandum dated April 4, 2008 states:

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

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and affidavits regarding notices to the Planning Department. According to the applicant's affidavits, the first and second notices were mailed by US Mail to surrounding property owners on March 3, 2008 and March 24, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 28, 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 owners, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum 15 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the 1-Story Dwelling/Garage and other site improvements, "AS-BUILT" upon "LOT 6". The current owners became aware of building encroachment issues after the survey and map of the property was completed (Note: The property's building envelope is unusual and limits building options). No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the small dwelling encroachments to be built upon the property within the property's minimum affected side yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 5-building permits and other associated construction permits issued to

subject TMK property. It appears that during construction of the dwelling improvements between 2001 and 2007, the portion of the dwelling/garage constructed into minimum 15 feet side yard went unnoticed by the builders, owners, 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/garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 6 with adjoining lot (TMK: 7-6-012:016, Lot 22) or "STREAM" owned by the County of Hawaii 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 approximately 7 years ago within a minimum 15 feet side) yard are not physically and/or visually obtrusive from the adjacent property (Lot 22) or "STREAM" and/or privately owned access and utility easements. It appears that the small building dwelling/garage encroachments into the property's affected side yard do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the dwelling/garage encroachments into affected minimum 15 feet 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

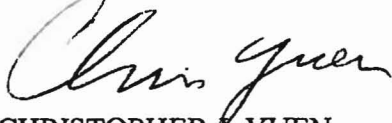
This variance request is approved subject to the following conditions:

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 attached "Garage" constructed upon "LOT 6" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated February 20, 2008. The approval of this variance permits the "1-Story Dwelling" and attached "Garage" to remain, "AS BUILT", upon the subject TMK property or upon "LOT 6" according to the variance site plan map signed and dated February 20, 2008.
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