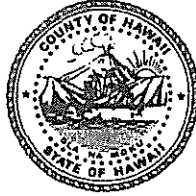


Harry Kim  
Mayor



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

March 15, 2006

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. (WH) VAR 05-006**

**Applicant: KLAUS D. CONVENTZ**  
**Owners: FREDDIE B. BERENGUE, ET AL.**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 7-3-023:077, Lot 51**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 05-006 permits accessory building (subject to the applicant or owners obtaining necessary building permit and construction permits) to remain, "AS-BUILT", with a minimum 14.5 feet to minimum 17.8 feet rear yard and attendant minimum 11.4 feet to minimum 14.9 feet rear yard open space. The variance is from the TMK property's minimum 20.0 feet rear yard and attendant minimum 14.0 feet rear yard open space requirements, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 51 consisting of 16,613 square feet, Unit IV (Lots 33 to 80), File Plan 975, portion of Coastview Subdivision, Grant 1606, is situated at Kalaoa 3<sup>rd</sup>, North Kona, Hawaii. The TMK property's street address is 73-1039 Ahulani Street.

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The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about January 10, 2005. The variance application's site plan map is drawn to scale and was prepared by Roger D. Fleenor, Professional Land Surveyor. The variance site plan map dated December 17, 2004 and surveyor's report dated December 22, 2004, indicates "an accessory structure" is within a 20 feet rear yard of "LOT 51" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1986 under Building Permit No. 07356, issued February 11, 1986.

Subject workshop/storage for personal use only was built in 2004 without permit. Both parties, owner and contractor, assumed the other one had taken out the permit.

Recently action was taken by the zoning inspector to request the owners should apply for proper building (and related electrical) permits. What the owner and contractor were not aware of was that the rear setback was not proper, until a survey conducted on December 17, 2004 by Roger D. Fleenor revealed the violation."

**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 walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show Building Permit (K07356) for a "DWELLING", Electrical Permit (EK06738), and Mechanical (MK05623) or Plumbing Permit were issued to subject TMK property.

According to the applicant, "Subject workshop/storage for personal use was built in 2004 without permit".

4 **Agency Comments and Requirements-(WH) VAR 05-006:**

- a. The Department of Public Works (DPW) memorandum dated March 24, 2005 states in part:

“We have reviewed the subject application and we have no comments or objections.”

Another DPW memorandum dated February 17, 2005 attached to the March 24, 2005 memorandum states in part:

“We have no comments or objections to the application.”

- b. The State Department of Health (DOH) memorandum dated February 25, 2005 states:

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

- 5 **Notice to Surrounding Property Owners.** Proof of sending 2-notice to surrounding property owners of all known surrounding property owner(s) within three hundred (300) of the boundary perimeter of subject TMK property by were received from the applicant. The notices were sent on January 10, 2005 and February 11, 2005, respectively, according to notarized affidavits in the variance file. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2005 according to the variance file.
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 owners, submitted the variance application to address the building encroachments within the property’s minimum 20-foot rear yard and resolve an outstanding zoning violation. The variance application’s site plan map was prepared by a surveyor and denotes the location of the “DWELLING” and “ACCESSORY STRUCTURE” and other site improvements, “AS BUILT”, on “LOT 51”.

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The current owners were issued a zoning violation letter and required to seek a permit for the non-permitted accessory building behind the dwelling. The "ACCESSORY STRUCTURE" or building encroachment within the property's minimum 20 feet rear yard was determined by a surveyor's map and report.

County building records show the dwelling identified on the variance site plan map was built and completed circa 1986 on the subject TMK property. According to the applicant, the 1-story accessory "workshop/storage" building was "built in 2004 without permit".

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachment within the rear yard and secure an "after-the-fact" building permit for the accessory building remaining improvements within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 51 with adjoining lot (TMK: 7-3-010:031, Lot 3) 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 was recently built approximately 2 years ago within the property's minimum 20-foot rear yard. No objections to applicant's request or variance application were received from the agencies and surrounding property owners. It appears that these building encroachments within the property's minimum rear yard do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments within the property's 20 feet rear yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision, provided, necessary "after-the-fact" building permits and other construction permits are secured from DPW. (Refer to variance conditions).

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The subject variance application was acknowledged by letter dated February 4, 2005 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance.

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 an accessory building constructed on "LOT 51" will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 17, 2004 and survey report dated December 22, 2004. The approval of this variance permits the existing "workshop/storage" or 1-story accessory building improvements to remain, "AS BUILT", on the subject TMK property or "LOT 51" according to the variance site plan map dated December 17, 2004.

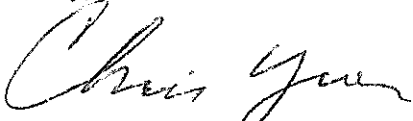
The applicant or current owners shall confer with the DPW-Building Division (Kona) and secure a building and any other construction permits on or before December 31, 2006 for the 1-story accessory (workshop/storage) building or "ACCESSORY STRUCTURE" identified on the December 17, 2004 variance site plan map. Any building permits or construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property to others.

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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

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xc: Real Property Tax Office-Kona