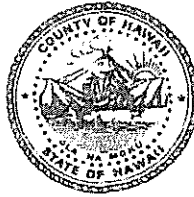


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED™ AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Aupuni Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

February 23, 2006

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. VAR 05-030**  
**Applicant: KLAUS D. CONVENTZ**  
**Owner: JACOB D. HARRIS**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 8-7-017:011, Lot 184**

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After reviewing your application and the information and plans submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-030 allows portions of the single story residence/carport to remain, "AS-BUILT" on Lot 184, with a minimum 5.91 feet to 9.96 feet side yard and attendant minimum 3.00 feet side yard open space in lieu of the minimum 8.00 feet side yard and attendant minimum 4.00 feet side yard open space requirements according to the variance site plan map dated and signed on March 7, 2005. The variance request is from the subject TMK property's minimum side yard and attendant minimum side yard open space requirement pursuant to the to 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 184 containing 7500 square feet, is within Kona Paradise Subdivision, being a portion of Mahele Award No. 25 and Royal Patent No. 7739 to Nahua, and situated at Kaohe 4<sup>th</sup>, South Kona, Hawaii.

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

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about March 28, 2005 to the Kona Planning Department. The variance application's site plan map drawing is drawn to scale and was prepared by a surveyor. The map was signed and dated "3/7/05". This variance site plan map denotes the "AS-BUILT" location of the dwelling and storage encroachment into the TMK property's minimum side (north) yard and respective side yard open space requirements.

The applicant's background states in part:

"The 1-story elevated single family dwelling with open deck and 2-car carport was built in 2004 under Building Permit No. 036576, and received final inspection on November 4, 2004.

Owner was unaware of any problems when a setback survey conducted March 7, 2005, by Pattison Land Survey, INC. (sic) revealed the encroachment, while the property is currently in escrow pending conveyance.

The lot is exactly square, and would not ordinarily rectify the misplacement of the structure. However, the lot's topography with an approximately 50 ft. drop top to bottom, together with brush and rock outcrops caused some major retainer measures on the South side of the house. In attempting to solve the problem along the driveway by moving the dwelling North the contractor did not realize that he was "pinching" it at the Northwest corner.

The Northwest eaves' corner however must be cut back to 3.0 ft. in order to comply with the regulations of Chapter 5, County Code, U.B.C., Section 504 and related regulations pertaining to fire-safety.

Undersigned so advised owner and owner agreed to comply upon review by the Planning Director of subject application."

3. **Agency Comments and Requirements-WH-VAR 05-030:**
  - a. The State Department of Health (DOH) memorandum dated May 19, 2005 states:

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

- b. No comments were received from the Department of Public Works (DPW).

However, the DPW-Building Division-Kona, recently confirmed that confirms that BP No. 036576 is stall active or "open". (See variance conditions).

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on March 28, 2005 and May 2, 2005 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letters from surrounding property owner and Kona Paradise Property Owners Association (KPPOA) were received:
  - a. Objection fax and letter dated May 21, 2005 from Susan Tanigawa, were received.
  - b. Objection letter dated June 21, 2006 from Chuck Savell, Chairman, KPPOA Architectural Review Committee.

**Note:** The objection letters and/or concerns regarding the dwelling position and dwelling's roof eave along the affected side boundary line were considered during the review of the variance application. Several variance applications from minimum yards (especially front and side yards) or variances to recognize the "AS BUILT" dwelling positions or building errors or "mistakes" caused by earlier builders/owners have been approved within this subdivision. Any written concerns from adjoining or abutting property owners are carefully weighed and considered; and, the applicant and/or current owner(s) will remove portions of the roof eave to meet the building codes and minimum UBC requirements and address the status of building and construction permits issued to the subject property. No objection letters were received from adjoining property owner(s) of Lot(s) 185 and 186.

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dba Baumeister Consulting  
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Any grading violation or concerns regarding material removal or transfer of materials between "vacant" building lots (outside the SMA) within this subdivision should be directly discussed with the DPW-Engineering Division and/or addressed between property owners belonging to the KPPOA Community Association.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

According to the applicant and County records, a building permit (B.P. No. 036576) to construct the dwelling was obtained from DPW. The applicant, on behalf of the current owner, is trying to address the encroachment issue constructed by others. Building or design options on "steep" or severely sloping lots within this particular subdivision-Kona Paradise are limited and require unusual foundations. The applicant's background states in part,

"The lot is exactly square, and would not ordinarily rectify the misplacement of the structure. However, the lot's topography with an approximately 50 ft. drop top to bottom, together with brush and rock outcrops caused some major retainer measures on the South side of the house. In attempting to solve the problem along the driveway by moving the dwelling North the contractor did not realize that he was "pinching" it at the Northwest corner."

It appears that the construction of the elevated 1-story dwelling/storage/carport improvements are being built according to an "active" building permit (036576) issued to the subject TMK property and/or previous owner. In addition to addressing the dwelling encroachment into the affected side yard, the applicant, on behalf of the current owner(s), will contact the DPW Building Division in Kona to address and "cut back to 3.0 ft." a corner of the roof eave (2.52 feet from the side (north) side boundary line) to insure that the minimum 3-foot DPW Building Codes and "U.B.C., Section 504 and related regulations pertaining to fire-safety" are met.

The site plan identifies the dwelling/storage encroachments within one of the property's minimum side yards and attendant side yard open space pursuant to the Hawaii County Zoning Code. It appears that these dwelling/storage/carport improvements are being constructed according to a building permit (036576) and/or other construction permits issued to the TMK property by the County. It appears that the building inspections of the premises, e.g. foundation, framing, etc. of the dwelling construction during 2003 and 2004 pursuant to BP No. 036576 nearly 2 + years ago did not disclose any building encroachment issues within the property or any building permit irregularities. The applicant and current owner are honestly trying to address the status of the dwelling's position which was started nearly 3 years ago.

### **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 the dwelling or modifying the attached carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property-Lot 184 with a portion of the adjoining property (Lot 186) and resubdivision and adjustment of minimum yards from revised boundary lines, etc.

### **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 existing dwelling encroachment into one of the property's minimum 8-foot side (northerly) yard and attendant minimum 4-foot side yard open space will not be physically and visually obtrusive from adjoining property owners (Lot 186) or Lot(s) 183 or 185 situated above or "mauka" of the subject property. The building encroachments were revealed by an instrument survey and were discovered during escrow to sell the property. The corner building/storage encroachment within the affected side yard does not detract from the character of the surrounding neighborhood and land patterns and the applicant/current owner(s) will address and County building or UBC requirements. Therefore, it is felt that the existing 2+ year old dwelling/stoorage encroachment within one of the side yard(s) of LOT 184 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated April 25, 2005 and additional time to confirm agency comments and objection letter(s) received regarding the variance application was necessary. The applicant, on behalf of the current owner(s), agreed to extend the date on which the Planning Director shall render a decision on the subject variance application.

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**

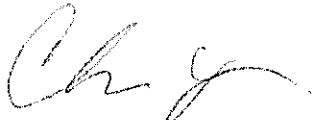
This variance request is approved subject to the following conditions:

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/owner, 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 existing single-story residence or dwelling/stoarge/carport, "AS-BUILT", on "LOT 184" will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum side yard open space requirements. The approval of this variance allows the existing dwelling/storage/carport improvements to remain, "AS BUILT", on Lot 184 pursuant to the variance site plan map which was signed and dated March 7, 2005.
4. The applicant or current owners shall address the status of the building permit-BP No. 036576 and/or any other building construction permits (including electrical/mechanical) issued to subject TMK property by the DPW-Building Division (Kona). The dwelling's roof eave nearest or roof eave along the property's side (north) boundary line shall be cutback to minimum 3-feet to comply with DPW building and UBC building requirements and BP No. 036576 and any other construction permits shall be closed or "finaled" by the DPW-Building (Kona) prior to sale of the property or transfer of title of the property by the current owner(s) to others.
5. Future 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  
P:\WP60\WRY\FORMLETT\VARAPPZCTMK870017011.BC.doc

cc: Real Property Tax Office-Kona  
Susan Tanigawa  
Chuck Savell, KPPOA