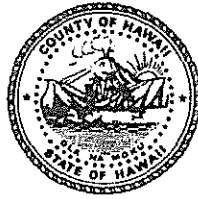


Harry Kim
Mayor



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Director

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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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

April 10, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 05-038
Applicant: KLAUS D. CONVENTZ
Owners: GEORGE BRANDT, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-028:023, Lot 30

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit VAR 05-038 allows portions of a "Skywalk" (walkway-bridge) attached to "2 Story House" to remain, "AS-BUILT" on "LOT 30", with a minimum 7.0 feet front yard open space in lieu of the minimum 10.00 feet front yard open space requirements according to the variance site plan map dated and signed on April 20, 2005. The variance request is from the subject TMK property's minimum front yard open space requirement pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lot 30 containing 7590 square feet, is within Kona Heights Subdivision, Increment II, File Plan 1077, and situated at Hienaloli 6th, North Kona, Hawaii. The property's street address is 75-5770 Makelina Place.

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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 April 25, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map shows portions of a "skywalk" were built within the minimum front yard open space of "LOT 30" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1974 under Building Permit No. 87, dated October 5, 1972 for the 2-story single family dwelling with lanais and garage, by predecessor in the property.

Owners were unaware of any problems when a setback survey conducted April 20, 2005, by KKM-Surveys, revealed the front yard open space violation, while the owners prepare for listing of the property for sale with due diligence.

The bridge/elevated walkway from the second floor to the street level ends 7.0 ft. from the front (East) boundary with Makelina Place's sidewalks, and connects then (sic) by concrete landing to the sidewalk itself."

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 and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Recent County building records show Electrical Permit (E955651) was issued to subject TMK property on or about August 25, 1995. According to the applicant's background report, the original 2-story dwelling on "LOT 30" was constructed on Lot 30 circa 1974.

4 **Agency Comments and Requirements-VAR 05-038:**

- a. The Department of Public Works (DPW) memorandum dated June 14, 2005 states in part:

"BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

The attached DPW-Building Division memorandum dated June 13, 2005 states in part:

"Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear

Others: The electrical permit No. E955651 was never finalized."

- b. The State Department of Health (DOH) memorandum dated June 16, 2005 states:

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

- 5 **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on April 25, 2005 and June 13, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about June 13, 2005 (Note: The variance docket number "VAR 05-036" originally assigned to the application was later corrected to "VAR 06-038" after the public notice was published).

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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 or resolve the dwelling's "skywalk" encroachments within a minimum 10 feet front yard open space on the property. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, skywalk, driveway, and other site improvements, "AS BUILT", on "LOT 30". The current owners became aware of building encroachment issues prior to selling or listing the property for sale. 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 within the affected front yard open space.

It appears that the original dwelling improvements together with skywalk improvement were constructed according to building permits and other associated construction permits issued to subject TMK property circa 1974. The skywalk is necessary due to the property's topography; and, it appears that during construction of the original 2-story dwelling improvements in 1974 that the skywalk improvements attached to the dwelling within property's minimum 10 feet front yard open space went unnoticed.

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's skywalk (access) to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 30 with right-of-way 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.

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It appears that the subject building encroachments constructed approximately 32 + years ago within the minimum front yard open space are not physically and/or visually obtrusive from the adjacent property or right-of-way (Makelina Place). It appears that these 32 + year old building encroachments 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 into the affected front yard open yard space identified on the variance application's site plan map and survey report will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 3, 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.

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3. Portions of the skywalk (walkway-bridge) located on "LOT 30" were built within the property's minimum 10 feet front yard open yard space requirement pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report. The approval of this variance permits the "skywalk" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 30" according to the variance site plan map and survey report dated April 20, 2005 by KKM SURVEYS.

The applicant or current owners shall address the status of Electrical Permit-E955651 issued to subject TMK property by the DPW-Building Division. The "open" electrical permit issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division on or before June 30, 2006 prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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