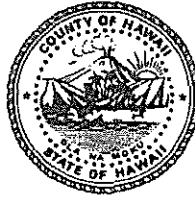


Harry Kim  
Mayor



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

April 28, 2006

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

Dear Mr. Conventz:

**VARIANCE PERMIT-VAR 05-053**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** JAMES A. RUIZ, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-6-012:118, Lot 2-A-3

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 05-053 allows portions of a 2-story dwelling to remain on Lot 2-A-3, "AS-BUILT", with a minimum 22.5 feet front yard and attendant minimum 5.6 feet to 18.0 feet front yard open space in lieu of the minimum 25.00 feet front yard and attendant minimum 19.00 feet front yard open space requirements measured between an easement line and respective building improvements according to the variance site plan map dated and signed on April 18, 2005. The variance is from the TMK property's minimum yard and attendant open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, (1), 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 2-A-3 containing 23,786 square feet, being a portion of R.P. 4475 L.C. Award 7713 Apana 43 to Kamamalu, is situated at Holualoa 1<sup>st</sup> and 2<sup>nd</sup>, North Kona, Hawaii. The property's street address is 76-0769 'Io Place.

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

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about May 31, 2005 by 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 signed and dated April 18, 2005 denotes portions of the "Dwelling" were built within the minimum 30 feet front yard and attendant minimum 24 feet front yard open space of "LOT 2-A-3" or subject TMK property.

The applicant's background states in part:

"Owners were unaware of any problems when a setback survey conducted by KKM-Surveys on April 18, 2005, revealed the encroachments, while the property was 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 CRM walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show building permit (026099), electrical permit (E035180), and mechanical (M025913) or plumbing permit were issued by the DPW to subject TMK property. It appears that the "Dwelling" on "LOT 2-A-3" was built pursuant to the building and associated construction permits issued between 2002 and 2003.

4. **Agency Comments and Requirements-VAR 05-053:**

- a. The Department of Public Works (DPW) memorandum dated September 2, 2005 states in part:

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

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Note: The above memorandum did not include any DPW-Building Division memorandum.

- b. The State Department of Health (DOH) memorandum dated September 13, 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 May 30, 2005 and August 16, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about August 18, 2005.
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 encroachments within the property's minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "Dwelling" and other site improvements, "AS BUILT", on "LOT 2-A-3". The current owners became aware of building encroachment within the property's front yard during escrow. No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected front yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 2002 and 2003, the dwelling encroachment within the property's front yard and attendant front yard open space went unnoticed.

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## **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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of property with the Right-of-Way fronting the property 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 3 to 4 years ago within the property's minimum front yard are not physically and/or visually obtrusive from the adjacent property or right-of-way ('Io Place). It appears that these 3 to 4 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 within the property's minimum front yard and attendant minimum front yard open 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 August 11, 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 the dwelling located on "LOT 2-A-3" will not meet the minimum front yard and attendant minimum front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and survey report dated April 18, 2005. The approval of this variance permits the "Dwelling" (including attached lanais, garage, and elevated walkway/bridge) improvements to remain, "AS BUILT", on the subject TMK property or "LOT 2-A-3" according to the variance site plan map and survey report signed and dated April 18, 2005.

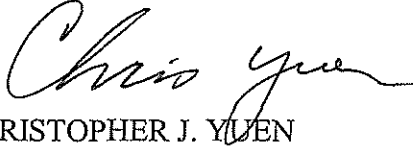
The applicant or current owners shall address the status of the "open" Building Permit-BP No. 026099 issued to subject TMK property. This active or "open" building permit issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others or by June 30, 2006.

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