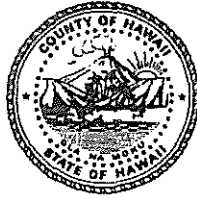


Harry Kim  
Mayor



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 21, 2006

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

Dear Mr. Conventz:

**VARIANCE PERMIT-VAR 05-063**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** SCOTT WOODMAN, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-3-033:081, Lot 81

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 05-063 allows portions of a 2-story dwelling/garage/lanai to remain on Lot 81, "AS-BUILT", with a minimum 7.12 feet side yard and attendant minimum 2.55 feet side yard open space in lieu of the minimum 10.00 feet side yard and attendant minimum 5.00 feet side yard open space requirements according to the variance site plan map dated and signed on June 20, 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 7, Section 25-5-76, Minimum yards, (a), 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 81 containing 10,422 square feet, of Kona Palisade, Unit II, being a portion of Grant No. 2972 to Kaapau and Kama, and Kalaoa 5<sup>th</sup>, North Kona, Hawaii. The property's street address is 73-4333 Holoholo Street.

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The property is zoned Agricultural (A-5a) by the County and designated Urban or "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 June 27, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc. The variance site plan map signed and dated June 20, 2006 and survey report indicates portions of the "TWO STORY RESIDENCE" were built within a minimum 10.00 foot side yard and associated minimum 5.00 foot side yard open space of "LOT NO. 81" or subject TMK property.

The applicant's background states in part:

"The dwelling was built in 1985 under Building Permit No. 03256 (sic).

Owners were unaware of any problems when a setback survey, conducted by Thomas G. Pattison on June 20, 2005, revealed the encroachments, while the property is in escrow 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 walls and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

It appears that the 2-story single family dwelling was built on "LOT NO. 81" pursuant to building permit (K05882) and associated electrical (EK05307) and mechanical (MK04593 permit(s) issued circa 1983. Current County records indicate the building permit and associated construction permits were closed by the DPW.

4. **Agency Comments and Requirements-VAR 05-063:**

- a. The Department of Public Works (DPW) memorandum dated September 8, 2005 states in part:

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

- b. No comments were received from the State Department of Health (DOH).
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 June 27, 2005 and August 29, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about August 26, 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 a minimum 10.00 feet side yard and attendant minimum 5.00 feet side yard open space. The variance application's site plan map and survey report was prepared by a surveyor and denotes the location of the "TWO STORY RESIDENCE" or building improvements, "AS BUILT", on "LOT NO. 81". The current owners became aware of the building encroachment issues during escrow. 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 side yard.

It appears that the dwelling improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property circa 1983. It appears that portions of the dwelling built within a minimum side yard and attendant minimum side 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 to fit within the correct building envelope prescribed by the Zoning Code.

2. Consolidation of Lot 81 with adjoining lot (TMK: 7-3-033:082, Lot 82) 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 22 + years ago within a minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot No. 82) or right-of-way (Holoholo Street). It appears that these 22+ 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 side yard and attendant side 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 August 18, 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:

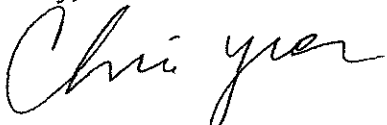
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 NO. 81" will not meet the minimum side yard and attendant minimum side yard open space 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 "TWO STORY RESIDENCE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 81" according to the variance site plan map and survey report signed and dated June 20, 2005.
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