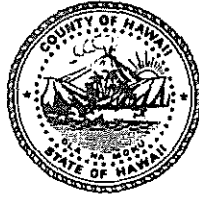


Harry Kim  
Mayor



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 10, 2006

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. (WH) VAR 05-076**

**Applicant: KLAUS D. CONVENTZ**

**Owner: LANCE K. MATSUMURA TRUST**

**Request: Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning**

**Tax Map Key: 7-7-012:020, (CON 98/SUB 06-000275)**

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. 05-076 permits a 2-lot re-subdivision (SUB 06-000275) of subject TMK property back into 2-10,000 square feet lots. Portions of a dwelling/garage may remain, "AS-BUILT", on a proposed 10,000 square feet lot (Originally-"LOT 52"), with a minimum (Measured from the original or proposed boundary line-South) 5.0 feet side yard and minimum (North) 7.0 feet side yard (s) and associated minimum 3.0 feet to minimum 4.5 feet side yard open space(s), respectively between the roof eave and respective south and north side boundary lines in lieu of the minimum 10.00 feet side yard and attendant minimum 5.00 feet side yard open space requirements required by Chapter 25, Zoning, according to the applicant's revised variance site plan map. 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 1, Section 25-5-7, Minimum yards, (a)(2)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

APR 18 2006

## **BACKGROUND AND FINDINGS**

1. **Location.** The subject consolidated property, containing 20,000 square feet and formerly Lot 52 and Lot 53, is within Sunset View Terrace Lots, Unit II, File Plan No. 684, being a portion of R.P. 7289, L.C. Award 7228 to Loe, is situated at Holualoa 4<sup>th</sup>, North Kona, Hawaii. The TMK property's address is 77-6463 Leilani Street.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC). The subject 20,000 square feet property was created on October 7, 1970 by consolidating original lots; "52" and "53", into a 20,000 square feet lot pursuant to Consolidation No. 98 (CON 98). The current owner recently submitted a request to subdivide the consolidated property back into 10,000 square feet lots (SUB 06-000275) according to original metes and bounds.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about July 25, 2005 and August 29, 2005 to the Kona Planning Department. The variance application's site plan map(s) are drawn to scale were prepared by KKM SURVEYS or for BAUMEISTER CONSULTING, respectively. The recent variance site plan or "PLOT PLAN" map prepared submitted by BAUMEISTER CONSULTING denotes the revised position of the "Dwelling" on proposed "LOT 52" after portions of the current dwelling/garage are removed on a proposed boundary line between proposed or original "52" and "53" to address minimum and open yard space requirements pursuant to the Zoning Code and other building code requirements.

The applicant's original background dated July 23, 2005 states in part:

"The dwelling was built in 1966 through 1966 through 1968 under Building Permit No. 34788, issued November 29, 1966 with an addition under Building Permit No. 472447 (sic), issued February 4, 1971."

"Owner was advised, and agrees, that gazebo and shed will be permanently removed."

The applicant's supplemental background dated August 26, 2005 states in part:

"The owner is requesting a setback variance relative to the northerly boundary with Lot 51 (neighbor parcel), see WH (VAR 05-076).

In addition, the owner wants to establish one (1) independent single family dwelling on each lot, and intends to demolish all dwelling improvements on Lot 53 and additional 5.0 ft. north of the boundary (see enclosed Proposed Plotplan)."

**Note:** The both variance site plan map(s) do not denote the location of a cesspool or Independent Wastewater System (IWS). The variance request does not address the status of the improvements on former lot "53" or location or position of CRM/CMU perimeter walls and landscaping, etc. along or straddling common boundary lines of existing consolidated property.

3. **County Building Records:**

County building records show 4-Building Permits (34788, 47247, 926096, and K04437) and Mechanical or Plumbing Permit (MK03463) were issued between 1966 and 1980 to subject TMK property. It appears that the dwelling, addition(s) to the original 1966 dwelling, and re-roof, etc. on Lot 52 and/or consolidated 20,000 square feet property were built pursuant to these building and associated construction permits.

4. **Agency Comments and Requirements-(WH) VAR 05-076:**

- a. The State Department of Health (DOH) memorandum dated October 17, 2005 states:

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

- b. The Department of Water Supply (DWS) memorandum dated October 18, 2005 states in part:

"We have reviewed the subject application and have no comments to the variance request from the setback and open space regulations."

- c. The Department of Public Works (DPW) memorandum dated October 18, 2005 states in part:

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“We have reviewed the subject application and our comments are as follows:

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

The attached DPW memorandum dated October 16, 2005 states in part:

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

The minimum setbacks shall be maintained as follows:  
3 ft. side, 3 ft. rear

Others: The plumbing permit No. MK03463 is not finaled.”

- 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 July 25, 2006 and October 17, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about October 13, 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 7.0 side (north) and 5.0 feet (south) side yard(s). The original variance application site plan map was prepared by a surveyor and denotes the location of the “Dwelling” and other site improvements, “AS BUILT”, on the consolidated 20,000 square feet lot. The current owner became aware of building position issues after he purchased the property and decided to re-subdivide back into the original lots. 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.

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It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 4-building permits and other associated construction permits issued to subject TMK property. It appears that the 1971 dwelling improvements were constructed into the side (north) yard. In addition, the owner's request to submit a subdivision application to re-subdivide the consolidated property back into the original lots requires portions of the dwelling straddling a proposed boundary to be removed to meet current County Zoning or cut back to meet minimum County building requirements.

### **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 a portion of original "Lot 52" with the adjoining property (TMK: 7-7-012:022, Lot 51) 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 original dwelling was built in 1966 and additions were completed circa 1971. The 35 + year old addition was constructed within the property's minimum side (north) yard. The dwelling original position in 1966 and 1971 building additions within the minimum yard(s) went unnoticed and are not physically and/or visually obtrusive from the adjacent property (Lot 51) or (public) right-of-way (Leilani Street). In addition, it is felt that the modification or reduction of the dwelling's living area permitted in 1966 to a minimum 5 feet side yard and minimum 3.0 feet side yard open space measured from the original common boundary line between Lot 52 and Lot 53 can be allowed. It appears that the original dwelling improvements constructed on Lot 52 and Lot 53 circa 1966 and later addition to the dwelling within the affected side (north) yard did not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns.

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The subject variance application was acknowledged by letter dated October 6, 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 subject TMK property will not meet the minimum 10 feet (north) side yard and proposed minimum 5.0 feet (south) side yard and attendant minimum 3.0 feet side yard open space from proposed common side boundary line (SUB 06-000275). This variance allows the dwelling encroachments within the north side yard to remain, "AS-BUILT", according to the variance application's site plan map and recent "Plotplan" map submitted by the applicant. The approval of this variance also permits portions of the "Dwelling" to remain, "AS BUILT", within a proposed minimum 10 feet (south) side yard and permits the "Dwelling" to be modified to have a minimum 5.0 feet (south) side yard and attendant 3.0 feet side yard open space on the original "LOT 52" or corresponding 10,000 square feet created by SUB 06-000275.

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dba Baumeister Consulting

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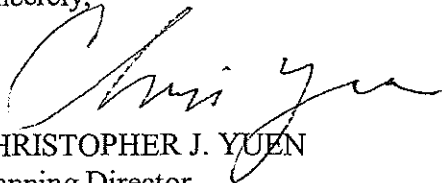
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The applicant or current owners shall address the status of the Mechanical Permit-MK03463 issued to subject TMK property by the DPW-Building Division (Kona). This active or "open" construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others and prior to approval of SUB 06-000275.

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling situated on "LOT 52" or corresponding lot created by SUB 06-000275 shall be granted, 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

WRY:cd

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xc: Real Property Tax Office-Kona