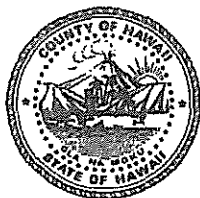


Harry Kim  
Mayor



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

May 5, 2006

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

Dear Mr. Conventz:

#### **VARIANCE PERMIT-VAR 05-078**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** SPENCER G. OLIVER, ET AL.  
**Request:** Variance from Chapter 25, Zoning,  
Minimum yards  
**Tax Map Key:** 6-8-005:042, Lot 99

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 05-078 allows portions of a 1-story dwelling/garage to remain on Lot 99, "AS-BUILT", with a minimum 8.3 feet to 9.7 feet side yard in lieu of the minimum 10.00 feet side yard according to the variance site plan map dated July 11, 2005. The variance request is from the subject TMK property's minimum yards and associated minimum open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B).

#### **BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property, Lot 99 containing 11,174 square feet, is within Waikoloa Village, Unit 1-A, File Plan 1188, and situated at Waikoloa, South Kohala, Hawaii. The property's street address is 68-1785 Laie Street.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about July 28, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Roger D. Fleenor, Professional Land Surveyor. The variance site plan map dated July 11, 2005, denotes portions of the DWELLING" were built within a minimum 10 feet side yard of subject TMK property or Lot 99.

The applicant's background states in part:

"The dwelling was built in 1980 under Building Permit No. 800275 and No. 935610 for the garage built in 1993.

Owner was unaware of any problems when a setback survey, conducted by Roger Fleenor on July 11, 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 any rock walls, concrete wall, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (800275, 935610), 1-Electrical Permit (EH55469, E935669), and 1-Mechanical (MH32133) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling/garage on Lot 99 were built pursuant to these building and associated construction permits issued in 1980 and 1993.

4. **Agency Comments and Requirements-VAR 05-078:**

- a. The Department of Public Works (DPW) memorandum dated September 8, 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: No Building Division memorandum was attached to the DPW memorandum. Refer to Variance Conditions.

- b. The State Department of Health (DOH) memorandum dated September 15, 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 July 29, 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. The variance application's site plan map was prepared by a surveyor and denotes the location of the "DWELLING/GARAGE" and other site improvements, "AS BUILT", on "LOT 99". The current owners became aware of 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 one of the property's 2-side yards.

It appears that the existing dwelling/garage improvements were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of dwelling/garage improvements during 1980 or 1993, the dwelling encroachment within a minimum 10.00 feet side yard went unnoticed.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

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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 99 with adjoining lot (TMK: 6-8-005:041, Lot 98) 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 26 years ago within one of property's 2-side yards are not physically and/or visually obtrusive from the adjacent property (Lot 98) or right-of-way (Laie Street). It appears that these 26 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 minimum 10.00 feet side 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 23, 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/garage located on "LOT 99" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated July 11, 2005. The approval of this variance permits the "DWELLING/GARAGE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 99" according to the variance site plan map dated July 11, 2005.

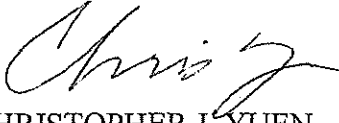
The applicant or current owners shall address the status of the "open" Mechanical Permit-MK32133 issued to subject TMK property. This active or "open" construction permit issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division (Kona) on or before July 31, 2006 and prior 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.

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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  
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xc: Real Property Tax Office-Kona