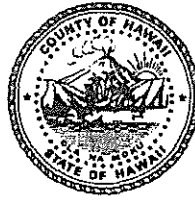


Harry Kim  
Mayor



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 05-089**

**Applicant: KLAUS D. CONVENTZ**  
**Owners: CHARLES W. HART III, ET AL.**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 7-5-014:006, Lot 17**

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 05-089 allows portions of a 1-story house and attached 2-car carport to remain on Lot 7, "AS-BUILT", with a minimum 28.9 feet rear yard for the dwelling and minimum 9.6 feet rear yard for the attached carport and associated minimum 6.4 feet to 12.0 feet rear yard open space in lieu of the minimum 30.00 feet rear yard and attendant minimum 14.00 feet rear yard space requirements according to the variance site plan map dated August 23, 2005. The variance request is from the subject TMK property's minimum rear yards and associated minimum open space requirements pursuant to the to 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 7 containing 1.358 acres, being the whole of R.P. 8050, L.C. Award 10270 to Mailou and a portion of Grant 982 to Naipuwailuna, and situated at Puaa 2<sup>nd</sup>, North Kona, Hawaii. The TMK property's address is 75-5621 Mamalahoa Highway.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about September 15, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates. The variance site plan map, dated August 23, 2005 denotes portions of a "1-Story House" and attached carport built prior to 1990 were built within the minimum 30 feet rear yard of "LOT 7" or subject TMK property.

The applicant's background states in part:

"The southeasterly 1-story Ohana cottage was built in 1987 under Building Permit No. 08207, issued April 28, 1987, with related shed (along southerly boundary) built under Building Permit No. 08067, issued February 27, 1987.

The northeasterly 2-story residence was built in 1992 under Building Permit No. 915924, together with Building Permit No. 925083 for alteration, No. 925089 for solar system, and No. 925292 for additions.

**Note:** The variance site plan map does not identify the location of the cesspool(s) or Independent Wastewater System (IWS). The variance request does not address the location or position of stonewall(s), retaining walls, and landscaping, etc. along or straddling common boundary lines.

In addition, OD 90-321 permit was issued to subject TMK on November 30, 1990 to permit the additional "ohana" dwelling unit. The "northeasterly 2-story residence" or "2-Story House" identified on the variance site plan map is the "ohana" dwelling.

3. **County Building Records:**

Current County building records show 5-Building Permits, 2-Electrical Permits and 3-Mechanical or Plumbing Permit were issued to subject TMK property. It appears that the "1-Story House" or first dwelling built on "LOT 7" was constructed pursuant to BP No. K08067 and other associated construction permits (EK07688 and MK06462) issued circa 1987.

4. **Agency Comments and Requirements-VAR 05-089:**

- a. The State Department of Health (DOH) memorandum dated October 19, 2005 states:

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

- b. No comments were received from the Department of Public Works (DPW). (Note: See variance conditions regarding "open" permits).

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 September 16, 2005 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 rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, shed, and other site improvements, "AS BUILT", on "LOT 7". The current owners became aware of building encroachment issues 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 rear yard.

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It appears that the existing 1-story dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the 1-story dwelling improvements within the property's rear yard and attendant rear 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 7 with adjoining TMK: 7-5-014:021 or Lot 8-C 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 portions of a 1-story dwelling and attached carport constructed approximately 19 years ago within the minimum 30 feet rear yard are not physically and/or visually obtrusive from the adjacent property (Lot 8-C) or public right-of-way (Mamalahoa Highway). It appears that the 1-story dwelling and carport 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 property's rear yard and attendant rear 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 October 6, 2005 and additional time to complete the variance background report and review building permit history 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.

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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 1-story dwelling and attached carport located on "LOT 7" will not meet the minimum rear yard and minimum rear yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated August 23, 2005. The approval of this variance permits the "1-Story House" and attached carport to remain "AS BUILT", on "LOT 7" or subject TMK property according to the variance site plan map dated August 23, 2005.
4. The applicant or current owners shall address the status of Building Permit-BP No. 925089 issued to subject TMK property by the DPW-Building Division (Hilo/Kona). This "open" building permit shall be closed or "finaled" by the DPW-Building Division on or before June 30, 2006 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.
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