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County of Hawaii
PLANNING DEPARTMENT

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June 27, 2006

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

Dear Mr. Conventz:

VARIANCE PERMIT-VAR 06-002

Applicant: KLAUS D. CONVENTZ
Owner: DOROTHY MORIMOTO TRUST
Request: Variance from Chapter 25, Zoning,
Minimum yards

Tax Map Key: 8-1-002:064, Lot 11-B

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-002 subject to variance conditions. The variance permits a detached carport and metal water tank to remain on Lot 11-B, "AS-BUILT". Portions of the carport have minimum 9.6 feet to minimum 11.9 feet front yard and attendant minimum 8.6 feet to 11.3 feet front yard open space in lieu of the minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space; and, portions of the detached water tank have a minimum 2.2 feet side yard and attendant 1.2 feet side yard open space in lieu of the minimum 10.00 feet side yard and attendant 5.00 feet side yard open space according to the variance site plan map dated December 6, 2005. The variance is from the TMK property's minimum front and side yard(s) and attendant front and side rear 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)(A)(B), 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 11-B containing 18,994 square feet, is part of the Ushiroda Subdivision, being a portion of Grant 2910 to John Yates, and situated at Kalukalu I-3, South Kona, Hawaii. The property's street address is 81-1135 Konawaena School Road.

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The property is zoned Single-Family Residential (RS-15) 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 January 13, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and was stamped by Blaine W. Ito, RPLS. The variance site plan map from the office of John D. Weeks, Inc., dated December 6, 2005, denotes portions of the "Gar." and "Water Tanks" were built within the property's minimum 20 feet front yard and minimum 10 feet side yard of the subject TMK property (LOT 11-B).

The applicant's background report dated January 11, 2006 (Page 2) states in part:

"The dwelling itself and the redwood watertank (sic) would not be subject to the Zoning Ordinance since both were built in 1955."

"The encroaching structures were built between 30 and 35 years ago, and no malice or intent could be substantiated pending undersigned's site inspection.

Owners were unaware of any violation until a setback survey conducted by Blaine Ito on December 15, 2005 revealed the encroachments.

Any structural correction would lead to the complete relocation of the catchment tank, together with the plumbing connections, while the garage would have to be eliminated altogether, thusly sharply reducing the property's Market Value due to functional obsolescence.

The trustee Ota is attempting to dispose of her deceased mom's property for Dorothy's heirs. Any such correction would have a devastating adverse effect on the deceased's remaining finances, while the violations of the setbacks of the carport relative to the roadway, or the watertanks (sic) close proximity to the westerly boundary, would in both cases not have any substantial influence or adverse impact on airflow and lighting between the actual dwelling and boundaries."

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 stonewalls and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

According to the applicant, the original dwelling and detached wood water tank were built in 1955. Additional building permits were issued for additions, etc. in 1959, 1969, and 1985. Recent County building records show Building Permits (K07069), Electrical Permits (EK06429, E900375, E015264), and Mechanical MK05352) or Plumbing Permit were issued to subject TMK property. According to the applicant, the dwelling, water tank(s), and other detached buildings were constructed pursuant to the building and associated construction permits issued between 1955 and 1985.

4. **Agency Comments and Requirements-VAR 06-002:**

- a. The State Department of Health (DOH) memorandum dated April 13, 2006 states:

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

- b. The Department of Public Works (DPW) memorandum dated April 10, 2006 states in part:

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

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 January 13, 2006 and March 24, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 3, 2006.

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

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The applicant, on behalf of the current owner, submitted the variance application to address or resolve the dwelling and water tank encroachments within the property's minimum front yard and minimum side yard. The variance application's site plan map was stamped by a surveyor and denotes the location of the dwelling, detached garage(carport), and 2 water tanks (1 redwood water tank and 1 metal water tank) and other site improvements, "AS BUILT", on the subject TMK property. The current owner or "successor trustee" became aware of building encroachment issues after a recent survey of the property and map was completed. 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 property's minimum 20 feet front yard and minimum 10 feet side yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed between 1955 and 1985 according to several building permits and other associated construction permits issued to subject TMK property. It appears that portions of the detached garage and metal water tank improvements constructed after 1967 within the property's minimum 20 feet front yard and minimum 10 feet side yard 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 the subject TMK property with the 20 feet wide right-of-way (TMK: 8-1-002:078) and adjoining property (TMK: 8-1-002:064, Lot 11A) 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 detached garage or carport and metal water tank constructed approximately 21+ years ago within the minimum 20 feet front yard and minimum 10 feet side yard, respectively, are not physically and/or visually obtrusive from the adjacent property (Lot 11A) or right-of-way. It appears that the detached 1-story garage or carport and a metal water tank encroachment within the property's minimum yards do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns.

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Therefore, it is felt that these building encroachments into the property's minimum front yard and minimum side yard and associated front yard and side yard open yard spaces identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 17, 2006 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 a garage and metal water tank located on "LOT 11-B" will not meet the minimum front yard and minimum side yard and attendant open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 6, 2005. The approval of this variance permits the "GAR." improvements and detached Metal Water Tank to remain, "AS BUILT", on the subject TMK property or "LOT 11-B" according to the variance site plan map dated December 6, 2005.


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The applicant or current owner shall address the status of Building Permits-BP No. K07069 issued to subject TMK property by the DPW-Building Division (Kona). This active or "open" building permit shall be closed or "finaled" by the DPW-Building Division on or before September 30, 2006 and prior to sale of the property or transfer of title of the property by the current owner 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.

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