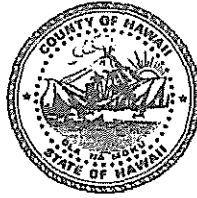


Harry Kim  
Mayor



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

September 28, 2006

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

Dear Mr. Conventz:

**VARIANCE-VAR 06-003**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** MYLES T. YAMAMOTO, ET AL.  
**Request:** Variance from Chapter 25, Zoning,  
**Tax Map Key:** 7-5-013:018

After reviewing your application, the Planning Director certifies the approval of variance-VAR 06-003 subject to variance conditions. The variance permits portions of a dwelling/lanai to remain on referenced TMK property, "AS-BUILT" with a minimum 12.98 feet to 13.00 feet side open space in lieu of minimum 14.00 feet side yard open space required by the Hawaii County Code, Chapter 25, Zoning, Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property, containing 5.135 acres, is part of Hualalai Farms Subdivision, and situated at Hienaloli 2<sup>nd</sup>, North Kona, Hawaii. The property's street address is 75-1083 Kamalani Street.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC). An Ohana Dwelling Permit (OD 94-50) was issued on September 9, 1994 subject to conditions.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about January 19, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc.; and, is signed and dated January 4, 2006. This site plan denotes the existing dwelling, detached garage, and other site improvements on Lot No. 3 (Unit A), consisting of 2.28 acres, is within the subject TMK property.

The applicant's background report dated January 11, 2006 states in part:

"The structures were built in 1987 under Building Permit No. 026473 for the greenhouse, Building Permit No. 07050 for the dwelling, and Building Permit No. 995236 subsequently in 1999 for the detached garage.

Owners were unaware of any problem when a survey conducted by Thomas Pattison Land Surveying, INC. revealed on January 4, 2006 the encroachments while the property is in escrow for conveyance.

From undersigned's site inspection it appears that inadvertently a marker wrongly used on the neighboring state land to the North lead to an honest staking error."

**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 approved ohana dwelling improvements, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 4-Building Permits (K07050, 885376, 995236, 026473), Electrical Permits (E885440, E035659), and Mechanical (M885396, M035062) or Plumbing Permits were issued to the subject TMK property. It appears that the 3-story residence (dwelling), detached garage, and other site improvements denoted on "LOT NO. 3" or "UNIT A" was built between 1985 and 2002. Recently, the applicant's representative forwarded copy(s) of Building Permit (B2006-1575K) issued on September 14, 2006 to construct a dwelling on portion of subject TMK property pursuant to ohana dwelling permit (OD 94-50) issued on September 9, 1994.

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4     **Agency Comments and Requirements-VAR 06-003:**

- 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:

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

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

Note: No "Building Division" memorandum was attached to the April 10, 2006 DPW memorandum. Refer to variance conditions.

- 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. The following comments or objection letters were received.

- 6a.    Objection letter dated January 16, 2006 from Carolyn A. Witcher.

- 6b.    Objection letter received on or about February 1, 2006 from Janet D. Gray and Wayne E. Gray.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

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The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachment into the property's affected minimum 14 feet side yard open space. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, detached garage, and other site improvements, "AS BUILT", on the subject TMK property. 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 minimum side yard open space.

It appears that the existing 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 dwelling's lanai/eave within the property's 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 subject TMK property with adjoining lot (TMK: 7-5-013:022) 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 dwelling encroachments constructed approximately 11 years ago within the property's minimum side yard open space are not physically and/or visually obtrusive from the adjacent property or privately owned rights-of-way. It appears that these 11 year old building encroachments with the property's side yard 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 within the affected side yard or minimum side yard open space identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by letter dated March 17, 2006. Pursuant to April 21, 2006, the applicant, on behalf of the owners, requested additional time for the agencies to review of the status of the ohana permit issued to the subject TMK property and secure the necessary dwelling permit to construct the second dwelling unit on portion of the subject TMK property prior to rendering a decision on the subject variance application.

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 denoted on "LOT NO. 3-UNIT A" will not meet the minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated and signed January 4, 2006. The approval of this variance permits the "THREE STORY RESIDENCE" of dwelling and other site improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO.3-UNIT A" in accordance to the variance site plan map dated January 4, 2006.

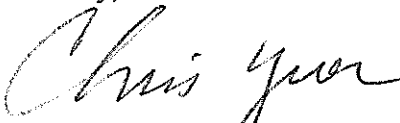
The applicant or current owners shall address the status of Building Permit-026473, Electrical Permit-E035659, and Mechanical Permit-M035062 issued to subject TMK property by the DPW-Building Division. These active or "open" building and related construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before December 31, 2006 or prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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4. Future or permitted new building improvements and permitted uses on the subject TMK property 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: OD 94-50  
Real Property Tax Office-Kona  
Richard J. Vidgen, Clark Realty  
Carolyn A. Witcher  
Janet D. Gray, Et al.