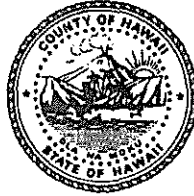


Harry Kim  
Mayor



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

October 17, 2006

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

Dear Mr. Conventz:

**VARIANCE-VAR 06-072**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** MICHAEL F. MARTINAGE, ET AL.  
**Request:** Variance from Chapter 25, Zoning,  
Minimum yards  
**Tax Map Key:** 8-2-003:028, Lot 10

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. requesting a variance to allow portions of a "Dwelling" (farm dwelling constructed pursuant to BP K04644) to remain on Lot 10, "AS-BUILT", with minimum 19.9 feet to minimum 29.4 feet rear yard and attendant minimum 16.9 feet to minimum 23.9 feet rear yard open space in lieu of minimum 30.00 feet rear yard and minimum 24.00 feet rear yard open space according to the variance application's site plan map signed and dated July 29, 2006. The variance is from the TMK property's minimum rear yard and attendant minimum rear yard open space required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards; (a), 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 TMK property, Lot 10 containing 5.060 acres of "CAPTAIN COOK ESTATES SUBDIVISION", being a portion of Grant 867 to Prest Cummings, is situated at Kiloa 1 and 2, Waipunaula, South Kona, Hawaii. The subject property's street address is 82-5990 Napoopoo Road.

The property is zoned Agricultural (A-5a) 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 1, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated July 29, 2006, denotes portions of the "Dwelling" was built within a minimum 30 feet rear yard of "LOT 10" or subject TMK property.

The applicant's background report dated September 1, 2006 states in part:

"The additional farm dwelling was built under Building Permit No. 04423 issued July 16, 1980 by predecessor owner in the property. The dwelling is listed in the property tax assessor's entries as dwelling No. 4.

Dwelling No. 1 of 4 is the main house built in 1995 under Building Permit Nos. 945440 (dwelling), 955031 (garage) and 955436 (alterations). The dwelling is located closest to the West boundary at the corner of the lot.

Dwelling No. 2 of 4 is located southwest closest to Napoopoo Road and was built in 1948 or earlier with subsequent additions from the 50s to the 70s.

Dwelling No. 3 of 4 is the westerly extension of the two structures connected by a bridge at the extreme easterly (off-set) corner of the property.

The easterly structure inside the setback will be permanently removed as per advice by undersigned including the connecting skywalk/bridge to the westerly structure. This structure expansion was built by predecessor in the property without permit.

The westerly part received only a building permit for a 1-story shed, Building Permit No. 02842, issued March 15, 1978. Again, the predecessor subsequently converted this structure to a 2-story dwelling without permit.

The new owners are honestly trying to bring the property in line with codes and regulations."

**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 CRM or Dry Stack Walls, wire fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 7-Building Permits (K03458, K04079, K04423, K04644, 945440, 955031, 955436), 6-Electrical Permits (EK03169, EK03887, EK03907, EK04127, EK04406, E945689), and 3-Mechanical (MK03177, MK03466, M955008) or Plumbing Permit were issued to subject TMK property or "LOT 10". According to the applicant background report and variance site plan map, it appears that the "additional farm dwelling" or portions of a "Dwelling" built into the property's minimum 30 feet rear yard was built pursuant to a building permit and associated construction permits issued circa 1980.

4. **Agency Comments and Requirements-VAR 06-072:**

- a. The State Department of Health (DOH) memorandum dated September 26, 2006 states in part:

"The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application (s) for any structures allowed to remain as-built."

- b. The Department of Public Works (DPW) memorandum dated September 26, 2006 states:

"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)."

The attached DPW memorandum dated September 15, 2006 states in part:

"We oppose the approval of the application or the reasons noted below.

The building permit for the subject dwelling was never finalized. Building permits 955031 and 955436 are still active.

Descriptions of permitted structures do not correspond with description on variance application. Building permits K03458, K04079, and K04644 discribed (sic) and permitted as Storage Structures, not dwellings as identified on survey map supplied by KKM Surveys."

October 17, 2006

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 1, 2006 and September 18, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 17, 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**

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within the subject property's minimum 30 feet rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwellings and other site improvements, "AS BUILT", on "LOT 10". The current owners became aware of building encroachment issues after they purchased the property. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these dwelling encroachments to be built within the property's rear yard. Pursuant to the applicant, "The new owners are honestly trying to bring the property in line with code and regulations". (Refer to variance conditions).

It appears that the original dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. According to the applicant the original and current dwelling improvements on the property were constructed between 1948 and 1995. Between 1980 and 1994, the farm dwelling encroachment within the property's minimum 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 10 with adjoining lot (TMK: 8-2-003:025, Lot 7) 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 farm dwelling encroachments constructed approximately 26 years ago into the property's minimum rear yard are not physically and/or visually obtrusive from the adjacent property (Lot 7) or right-of-way fronting the property (Napoopoo Road). It appears that these farm dwelling encroachments into the property's rear yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected rear yard and attendant rear yard open space will not detract from the character of the immediate neighborhood or the subdivision.

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 "farm dwelling" located on "LOT 10" 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 signed and dated July 29, 2006. The approval of this variance permits the "Dwelling" or "additional farm dwelling" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 10" according to the variance site plan map.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
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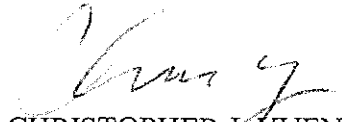
The applicant or current owners shall address the status of the "open" building permits (955031, 955436) and electrical permits (EK04127, EK04406) issued to subject TMK property by the DPW-Building Division. The "open" building permits and "open" electrical permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division on or before December 31, 2006.

The applicant or current owners shall remove the "easterly" building on or before December 31, 2006.

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