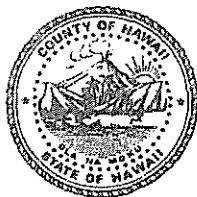


Harry Kim  
Mayor



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

February 2, 2007

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

Dear Mr. Conventz:

**VARIANCE-VAR 06-088**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** MARTHA BRADLEY LANG TRUST  
**Request:** Variance from Chapter 25, Zoning,  
Minimum yards

**Tax Map Key: 7-8-014:039, Lot 35**

After reviewing subject variance application, the Planning Director approves Variance-VAR 06-088 subject to variance conditions. The variance allows portions of original 1-Story Residence/Open Lanai/Roof Eave constructed circa 1967 to remain, "AS-BUILT", with minimum 10.10 feet to minimum 10.14 feet front yard and attendant minimum 0.25 to minimum 0.77 feet front yard open space measured from the property's boundary line along Alii Drive in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard according to the variance application's site plan map signed and dated October 20, 2006. The variance is from the TMK property's minimum front yard along Alii Drive required by the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum yards, (1), 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, containing 0.16 acre or 6970 square feet, being Lot 35 of Kahaluu Beach Lots, is situated at North Kona, Hawaii. The subject TMK property's street address is 78-6701 Alii Drive.

The property is zoned Resort (V-1.25) by the County and designated Urban "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application to the Kona Planning Department on October 25, 2006 and granted an additional time to Planning Department to secure a copy of the original building permits and study other County building requirements in 1967.

The variance application's site plan map is drawn to scale and was prepared by Pattison Land Surveying, Inc. and is signed and dated October 20, 2006. This variance site plan map denotes the "AS-BUILT" position of the 1-story dwelling and lanai including roof eave improvements on the subject TMK property. The variance site plan map denotes portions of the "SINGLE STRORY RESIDENCE" including "Lanai" and attendant roof eaves on "Lot 35" were built into the property's minimum 20 feet front yard measured from the subject TMK property's front boundary line along Alii Drive.

The applicant's background report dated October 22, 2006 states in part:

Page 1. "The dwelling was built by predecessor under Building Permit No. 35793, issued March 29, 1967.

It is obvious that the subject property reflects typical improvements 1967, at the time the Zoning Ordinance came into effect, limiting non-conforming structures and uses to September 21, 1966. However, the actual maps related to the ordinance were not adopted before early 1967. In fact, undersigned has found repeatedly in the past that it took the general public, owners, contractors and designers, as well as county code enforcement, at least several years to recognize and acknowledge the relevance of the new ordinance. In addition, it should be pointed out that preceding regulations to building and housing codes did not require front yard setbacks and clear spaces either, as reflected in Ordinance 94, Housing Code, adopted August 30, 1967, and any earlier version to Housing and Building Codes. The property tax records show the building in 1969."

Page 2. "It is obvious that neither the general public, neighbors or county officials (sic) have recognized in almost four decades the encroachments, which were revealed by a survey conducted on October 18, 2006 by Pattison Land Surveying, INC., while the property of the deceased is subject to escrow procedure for conveyance and disposal of trust assets."

**Note:** The variance site plan map does not address the location or position of dry stack walls, CRM walls, and landscaping, etc. along or straddling common boundary lines shared with adjoining property, Alii Drive, or access easements.

**Site Inspection:** Planning Department staff and the applicant visited the subject TMK property on January 31, 2007 to verify the condition of the improvements and position of the eave improvements built into Alii Drive. (Refer to variance conditions).

3. **County Building Records:**

Real Property show 1-Building Permit (35793) was issued to subject TMK property in 1967. It appears that the dwelling and lanai improvements on "LOT NO. 82" was built pursuant to this building permit issued circa 1967 and other construction permits, e.g. electrical and plumbing permits.

4. **Agency Comments and Requirements-VAR 06-088:**

- a. The Department of Public Works (DPW) memorandum is dated December 18, 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).

The applicant shall remove any encroachments or obstructions within the County right-of-way."

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

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

The projections do not meet setback requirements and should be corrected.

Others: BP 35793 does not reflect the dwelling having a lanai permitted and that there shall be a six foot six inch set back to nearest property line."

- b. The State Department of Health (DOH) memorandum is dated January 25, 2007. (Refer to DOH memorandum in variance file).
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 October 26, 2006 and December 11, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 13, 2006.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter was received:
  - 6a. Objection letter from Mokuaikaua Church dated December 14, 2006.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owner, submitted the variance application to address or resolve the dwelling encroachments into the property's minimum 20 feet front yard along Alii Drive. According to the applicant's background report, the 1-story dwelling and lanai improvements including roof eaves were permitted in 1967 and completed and established on the property by 1969. The current owner (Trustee) and applicant became aware of encroachment issues after a survey was required for escrow purposes. No evidence has been found to show indifference or premeditation by original lessee/previous owner (B. P. Bishop Estate) to deliberately create or intentionally allow the dwelling and associated lanai/roof encroachments to be built into the property's front yard along Alii Drive and into the road Right-of-Way (Alii Drive).

It appears that the existing dwelling improvements were constructed according a building permit issued on or about April 25, 1967. It appears that portions of the dwelling's living area including the open lanai and roof eaves were completed before 1969. And, it appears that during construction of the dwelling improvements between 1967 and 1969, the dwelling's position on the property and attached lanai improvements within the property's front yard along Alii Drive went unnoticed by the landowner or agencies.

#### **ALTERNATIVES**

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

1. Remove the 37 + year old dwelling and open lanai encroachments or redesigning or relocating the dwelling and lanai/roof eave to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the existing property with adjoining the Alii Drive (a publicly owned right-of-way) and resubdivision to modify the property's boundary line and adjust minimum yards, etc.

### **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 a portion of the dwelling, and lanai/roof eave constructed approximately 37 + years ago into the subject property's front yard along Alii Drive are not visually obtrusive from Alii Drive or surrounding properties. It appears that these 37 + year old dwelling and open lanai encroachments on the subject TMK property do not depreciate or detract from the character of the surrounding neighborhood, public use (park), and surrounding land patterns. Therefore, it is felt that the portion of the dwelling's living area, open lanai (posts), and associated roof eaves constructed into the affected 20 feet front yard 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 December 5, 2006 and additional time to review the original building permit and visit the property to verify the improvements was necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance to February 4, 2007.

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, attached lanai and associated roof eaves on the subject TMK property not meet the minimum 20 feet front yard and attendant minimum 14 feet front yard open space requirements of Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated October 20, 2006. The approval of this variance permits the existing 1-story dwelling, attached lanai, and associated eave improvements within the affected front yard along Alii Drive to remain, "AS BUILT", on the subject TMK property according to the variance site plan map in the variance file.

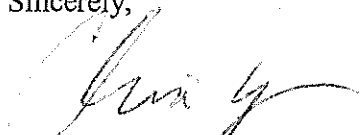
The applicant or current owner shall contact the DPW-Building Division in Kona and secure a building permit for existing "Lanai" and associated lanai roof eave improvements, if necessary, that may have been constructed in association with original building permit (35793) or dwelling (lanai/roof eave) improvements completed before 1969. The roof eave improvements constructed into Alii Drive (Right-of-Way) shall be removed and new gutter improvements shall be installed on the roof fascia together with downspouts to direct rainwater "roof runoff" into the subject property away from Alii Drive. The roof eave encroachment into Alii Drive shall be removed and necessary gutter/downspout improvements installed before December 31, 2007. Any new building permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(Trustee) to others.

4. 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.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
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February 2, 2007

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  
Mokuaikaua Church-Rev. Henry K. Boshard