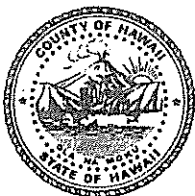


Harry Kim  
Mayor



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 20, 2007

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

Dear Mr. Conventz:

**VARIANCE-VAR 06-098**

**Applicant: KLAUS D. CONVENTZ**

**Owners: ROY ESMAILZADEH**

**Request: Variance from Chapter 25, Zoning,  
Minimum yards**

**Tax Map Key: 9-2-107:033, Lot 16**

After reviewing subject variance application, the Planning Director certifies the approval of Variance-VAR 06-098 subject to variance conditions. The variance allows portions of "2-Story House/Lanai/Steps/Eave" to remain on the subject TMK property or Lot 16, "AS-BUILT", with a minimum 19.8 feet to minimum 19.9 feet side (North) yard and attendant minimum 12.9 feet side (South) yard open space according to the variance site plan map dated December 1, 2006. The variance is from the TMK property's minimum 20 feet side yard and attendant minimum 14 feet side yard open space required pursuant to the 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 TMK property, Lot 16 containing 43,610 square feet, is within Block 210 of Hawaiian Ocean View Estates, File Plan 787, being a Portion of Grant 2791 to C. C. Harris, and situated at Kahuku, Kau, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "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 December 11, 2006. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates. The variance site plan map, dated Revised-December 7, 2006 denotes a portion of the "2-Story House" was built into the property's minimum 20 feet side (northerly) yard and portions of an open "Lanai", "Steps" and "Eave" were built into the property's minimum 14 feet side (southerly) yard open space of "LOT 16" or subject TMK property.

The applicant's background report dated December 10, 2006 states in part:

"The building was built under Building Permit No. B2005-2014K and is currently subject to final inspections.

Owner was unaware of any problem, until a survey, conducted by West Thomas & Associates (sic) on December 1, 2006, revealed the encroachments while the property is in escrow for conveyance.

It appears that the owner's contractor made an honest staking error. No malice and intent could be substantiated during undersigned's inspection, nor would owner or contractor have benefited from such violation in any way.

However, considering the width of the property (70.00 ft.), and the 20.00 ft. side yard setbacks and related projections, the home with covered lanai and projection staircase could not have fit within the available space. This was overlooked by the designer, architect, contractor and county agencies.

Yet the violation of the open space at the roof overhang is only 1.1 ft. (13.2 in.), even less at the staircase with 0.6 ft. (7.2 in.). The encroachment of the projections, although rather miniscule, trigger the variance application, while the actual setback violation North with 0.1-0.2 ft. (1.2-2.4 in.) would indeed be subject to De Minimis regulations under the Zoning Code only, so the projection of the stairway."

**Note:** The variance request does not address the location or position of any stonewall and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (B2005-2014K), 2-Electrical Permits (E2006-0609K, E2007-0029K), and 1-Mechanical (M2005-1690K) or Plumbing Permit were issued to subject TMK property. The 2-story dwelling including attached open lanai, steps, and roof eave, detached water tank, and other related site improvements on "LOT 16" were built pursuant to these building and associated construction permits issued between 2005 and 2007.

4 **Agency Comments and Requirements-VAR 06-098:**

- a. The Department of Public Works (DPW) memorandum or comment dated January 10, 2007 states:

"NO COMMENTS"

Note: According to the applicant's February 13, 2007 letter, an active or supplemental electrical permit (E2007-0029K) associated with the original building permit was closed or deemed "completed" by an electrical inspector in the Kona-DPW-Building Division.

- b. The State Department of Health (DOH) memorandum is dated January 19, 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 notice was mailed on December 11, 2006 and second notice was mailed on December 28, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 30, 2006.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following written comments or objections from surrounding property owners or the general public were received:

- 6a. Objection letter from Bruce Vitulli dated January 8, 2007.
- 6b. Objection letter from Bruce S. Travis received on January 11, 2007.

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Note: Pursuant to the applicant's request, the above objection letters were faxed on or about January 12, 2007 to the applicant for review.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owner, submitted the variance application to address or resolve the dwelling/lanai/step/eave encroachment into the property's northerly and southerly side yards. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling/lanai/steps and other site improvements, "AS BUILT", on "LOT 16". The current owner became aware of building encroachment issue during escrow. No evidence has been found to show indifference or premeditation by the owner or contractor to deliberately create or intentionally allow these building encroachments to be built within a minimum side yard and minimum side yard open space.

The dwelling and associated site improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 2005 and 2006, the dwelling encroachment into the respective side yards went unnoticed by the contractor and agencies.

### **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/lanai/steps/eave to fit within the correct building envelope and meet minimum open yard space requirement prescribed by the Zoning Code.
2. Consolidation of Lot 16 with adjoining property(s) (TMK: 9-2-107:032, Lot 14 and TMK 9-2-107:034, Lot 18) and resubdivision to modify property lines and/or 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.

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It appears that the subject building encroachments constructed approximately 1-year ago within the minimum side yard(s) are not physically and/or visually obtrusive from the adjacent property(s) or privately owned right-of-way (Koa Lane). It appears that these building encroachments into the property's northerly side yard and southerly minimum side yard open space do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns.

The subject variance application was acknowledged by letter dated December 18, 2006 and additional time was requested by the applicant to confer with the Kona DPW-Building Division regarding an open electrical permit. The applicant agreed to an extension of time to complete the variance background report and render a decision on the subject variance to February 20, 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:

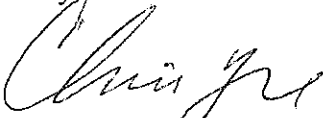
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 a 2-story dwelling, open lanai, steps, and roof eave located on "LOT 16" will not meet the minimum side yard and minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to a variance application's site plan map dated December 7, 2006 (Revised). The approval of this variance permits the 2-story dwelling, open lanai, steps, and roof eave improvements, "AS-BUILT" to remain on "LOT 16" or subject TMK property according to the variance site plan map dated December 7, 2006.

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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

WRY:cd  
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xc: Real Property Tax Office-Kona  
- Bruce Vitulli  
Bruce S. Travis