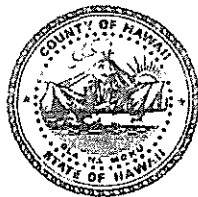


Harry Kim  
Mayor



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

March 13, 2007

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

Dear Mr. Conventz:

**VARIANCE-VAR 07-005**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** KOICHI MATSUNO, ET AL.  
**Request:** Variance from Chapter 25, Zoning,  
Minimum yards  
**Tax Map Key:** 7-5-027:025, Lot 89

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-005 subject to variance conditions. The variance allows portions of a "Dwelling" (Lanai) and attendant "Eave" to remain on Lot 89, "AS-BUILT", with a minimum 3.9 feet side yard and attendant minimum 1.7 feet side yard open space in lieu of minimum 8.00 feet side yard and minimum 4.00 feet side yard open space according to the variance application's site plan map signed and dated February 24, 2000. The variance is from the TMK property's minimum side yard and attendant minimum side yard open space requirements pursuant to 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, containing 8561 square feet, is Lot 89 of Kona Heights, Increment I, File Plan 1075, and situated at Hienaloli 5<sup>th</sup> and 6<sup>th</sup>, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on January 16, 2007 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 February 24, 2000 denotes portions of the "Dwelling" and "Eave" are within a minimum 8 feet side yard of "LOT 89" or subject TMK property.

The applicant's background report dated January 13, 2000 states in part:

"The building was built under Building Permit No. 2543, issued August 17, 1977, with an addition under Building Permit No. 925536 issued April 9, 1992.

Owners were unaware of any problem, until a survey, conducted by KKM-Surveys February 24, 2000, revealed the encroachments while the property was in escrow for conveyance.

Language problems might have caused the Matsunos (sic) to misread or misunderstand the consequences at that time.

At this time, however, the property is in escrow again for conveyance and the owners' real estate agent made them aware of the pending problem."

**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 wall and any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Real Property permit records show 2-Building Permits (2543, 925536), 1-Electrical Permit were issued to subject TMK property in 1977 and 1992. It appears that the "Dwelling" including roof eaves on "LOT 89" was built pursuant to these building issued to previous owner(s) in 1977 and 1992.

4. **Agency Comments and Requirements-VAR 07-005:**

- a. The State Department of Health (DOH) memorandum is dated February 9, 2007. (Refer to copy of DOH memorandum in subject variance file).

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 3  
March 13, 2007

- b. The Department of Public Works (DPW) memorandum dated January 29, 2007 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 attached DPW-Building Division memorandum dated January 29, 2007 states in part:

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

The building permit for the subject dwelling was never finalized. Building permit 925536 still active (sic).

The exterior wall or projections shall be constructed to provide one-hour fire resistive occupancy separation.”

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 15, 2007 and January 29, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 31, 2007.
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 the dwelling encroachments within a minimum 8 feet side yard of Lot 89. The variance application's survey map or variance site plan map was prepared by a surveyor and denotes the location of the “Dwelling” and other site improvements, “AS BUILT”, on “LOT 89”. The current owners became aware of the outstanding encroachment issue during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 4  
March 13, 2007

According to Real Property records, it appears that the original dwelling was built in 1977 subsequent dwelling improvements were constructed started in 1992 according to building permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1977 and/or 1992, the dwelling encroachment into the property's minimum side yard and minimum open yard space went unnoticed by the builders and/or 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 portions of 1-story dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 89 with adjoining lot (TMK: 7-5-027:026, Lot 88) 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 dwelling's and "covered lanai" were constructed between 14 to 30 years ago within a minimum side yards are not physically and/or visually obtrusive from the adjacent property (Lot 88) or right-of-way (Aloha Kona Drive). According to the applicant, "the covered lanai was screened in to provide biting insect protection". It appears that the original dwelling constructed in 1977 and subsequent improvements constructed in 1992 within the affected side yard and attendant side yard opens space do not depreciate or detract from the character of the surrounding neighborhood and 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 dwelling located on "LOT 89" will not meet the minimum side yard and minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map or variance site plan map signed and dated February 24, 2000. The approval of this variance permits the "Dwelling" and associated "EAVE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 89" according to the variance site plan map signed and dated February 24, 2000 in subject variance file.

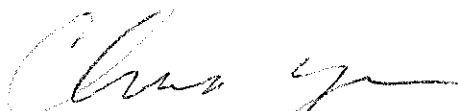
The applicant or current owners shall contact the DPW-Building Division (Kona) to close or complete active Building Permit No. 925536 issued to subject TMK property. This active building permit shall be "finaled" by the DPW and any corrective building improvements required by the DPW to meet the County Building Code or UBC requirements shall be addressed by the applicant or current owners prior to escrow or sale of the property or transfer of title of the property by the current owners 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.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 6  
March 13, 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  
P:\public\Wp60\WRY\FORMLETT\VAR07-005ZCSETBACKTMK.75027025.BC.doc

xc: Real Property Tax Office-Kona