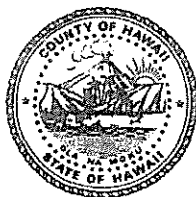


Harry Kim  
Mayor



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 07-006**

**Applicant: KLAUS D. CONVENTZ**

**Owner: JOHN DAGRES**

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

**Tax Map Key: 7-8-020:010, Lot 17**

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-006 subject to variance conditions. The variance allows portions of a "TWO STORY RESIDENCE" and attendant roof eave to remain on Lot 17, "AS-BUILT", with minimum 7.24 feet to minimum 9.65 feet side yard and attendant minimum 4.50 feet side yard open space in lieu of minimum 10.00 feet side yard and attendant minimum 5.00 feet side yard open space according to the variance application's site plan map signed and dated September 24, 2004. 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 1, Section 25-5-7, Minimum yards, (a)(2)(B), 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 13,125 square feet, is Lot 17 of "KEAUHOU SUBDIVISION", being a Portion of Royal Patent 4475, L.C. Aw. 7713:7, and situated at Keauhou 1<sup>st</sup>, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "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, attachments, and filing fee to the Kona Planning Department on January 16, 2007. The variance application's site plan map is drawn to scale and prepared by PATTISON LAND SURVEYING, INC. The survey map or variance site plan map is signed and dated September 27, 2004, denotes portions of a "TWO STORY RESIDENCE" and attendant "EAVE LINE" were built within a minimum 10 feet side yard "LOT NO. 17" or subject TMK property.

The applicant's background report dated January 13, 2007 states in part:

"The building was built under Building Permit No. 02710, issued December 27, 1977, Building Permit No. 02752 for the inground swimming pool and concrete deck, issued January 24, 1978. Further additions were made under Building Permit Nos. 935636 and 935637, both issued July 1, 1993.

While the predecessor's contractor basically did a proper staking job considering the sprawling complex lay-out of the footprint and the irregular shape of the parcel, however, two small portions of the extreme southeasterly corners encroached into the side yard setback relative to the southeasterly boundary with TMK (3) 7-8-12:46, which is also the subject owner's property."

**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 "Mesh Fence", "Wood Fence" on the property or straddling common boundary lines including landscaping.

3. **County Building Records:**

County Real Property Tax Office records show 4-Building Permits (02710, 02752, 935636, 935637), 3-Electrical Permits (E935514, E935515), and 2-Mechanical (M935436, M955719) or Plumbing Permit were issued to subject TMK property. Real Property Tax Office records indicate the 2-story dwelling, garage and other building improvements on "LOT NO.17" were constructed pursuant to building and associated construction permits issued between 1977 and 1993.

4. **Agency Comments and Requirements-VAR 07-006:**

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

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- 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:

Building 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 955822 still active (sic).

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 owner, submitted the variance application to address the dwelling encroachments within a minimum 10 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the 2-story dwelling and other site improvements, "AS BUILT", on "LOT NO. 17". It appears that the owner became aware of the dwelling's encroachment within minimum side yard in 2004 after a survey and survey map of the map was done in 2004. No evidence has been found to show indifference or premeditation by the owner or builders to deliberately create or intentionally allow these dwelling and eave to be built within the affected side yard.

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It appears that the existing dwelling improvements and other additions and site improvements were constructed according to building permits and other associated construction permits issued to subject TMK property between 1977 and 1993. During construction of the original dwelling in 1977 and/or during construction of additions and other site improvements it appears that the corners of the 2-story dwelling and associated eaves within the property's side yard and attendant side yard open space went unnoticed by the builders 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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 17 with adjoining lot (TMK: 7-8-012:046, Lot 1) 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 building encroachments constructed approximately 30 years ago within the minimum side yard are not physically visually obtrusive from the adjacent property (Lot 1) and visible from the right-of-way or cul-de-sac (Heeia Way). It appears that these dwelling encroachments into the property's minimum 10 feet side yard and attendant minimum 5 feet side yard open 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**

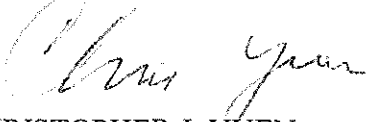
This variance request is approved subject to the following conditions:

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 a 2-story dwelling including associated roof eaves located on "LOT NO. 17" will not meet the property's minimum side yard and attendant minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated September 27, 2004. The approval of this variance permits the "TWO STORY RESIDENCE" and associated "EAVE LINE" to remain, "AS BUILT", on the subject TMK property or "LOT NO. 17" according to the variance site plan map in subject variance file.  
  
The applicant or current owner shall contact the DPW-Building Division (Kona) to close or complete active Building Permit No. 955822 issued to subject TMK property. This active building permit shall be "finaled" by the DPW-Building Division on or before July 31, 2007 and prior to any future sale of the property or transfer of title of the property by the current owner 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.

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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  
James Finen