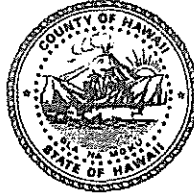


Harry Kim  
Mayor



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

April 10, 2007

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

Dear Mr. Conventz:

**VARIANCE-VAR 07-011**

**Applicant: KLAUS D. CONVENTZ**  
**Owner: KARG FAMILY TRUST**  
**Request: Variance from Chapter 25, Zoning,  
Minimum yards**  
**Tax Map Key: 7-5-016:056, Lot 1-A**

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-011 subject to variance conditions. VAR 07-011 permits proposed "2 STORY RESIDENCE" including "GARAGE/OPEN DECK" and associated roof eaves to be built on Lot 1-A with minimum 10.00 side yards and attendant minimum 5.00 feet side yard open yard spaces in lieu of the property's minimum 15.00 feet side yards and attendant minimum 10.00 feet side yard open space requirements according to the survey map and/or plot plan map received with the variance application. The variance is from the TMK property's minimum side yard and attendant minimum 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 1-A containing 21,294 square feet, Land Commission Award 8559:B-8, is situated at Pua'Puaa Nui 2<sup>nd</sup>, North Kona, Hawaii.

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

The subject TMK property's land area (21,294 square feet area) and the property's average width, ranging between 48 + feet (low) to 66 + feet (high) along the "old" Mamalahoa Highway, are both "non-conforming". Pursuant to Chapter 25, Section 25-5-77, Other regulations, the subject TMK property's land area (21,294 square) would require the site's average width to be minimum 110 feet.

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on February 16, 2007. The application includes a survey map of the property, dated and signed on May 20, 2006 by Pattison Land Surveying, Inc. and site plan map, prepared by the applicant. Both maps are drawn to scale and denote the property's minimum yards required by Chapter 25, Zoning. The applicant's site plan map denotes the position of proposed 2-story dwelling/garage and roof eaves on the property. The variance would change or amend the property's minimum side yards to minimum 10 feet side yard(s) and attendant minimum 5 feet side yard open space(s).

The applicant's background report dated February 15, 2007, pages 1 and 2, state in part:

Page1:

The land is vacant. Based on the lot's size it is subject to the regulations for setbacks and open spaces under Chapter 25, Article 5, Division 5, RA, Residential and Agricultural Districts, Section 25-5-56. Minimum Yards (2) Side Yards, 15 ft.

When the Karg Family obtained the property they were unaware of the impact the prevailing setback rules would have relative to their property.

Although the land's size is roughly ½ acre, however with close to four hundred (400) ft. depth and 66.30 ft. front and 52.00 ft. rear extremely narrow.

Even worse, in the center of the land, the area with the best suited construction site, the width narrows even further down to barely 48.22 ft. Due to Mamalahoa Highway's traffic condition and the steepness of the land a site closer to the highway is possible but for various reasons is not advised.

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In the strictest application of the Zoning Code the maximum width for the proposed dwelling would be less than 18.00 ft. considering the finish trim and siding.”

Page 2:

“The land is a nonconforming lot with a width averaging barely 55.5 ft; this compared to the minimum building sit average width in the RA District of 100 ft. for the first ½ acre under Section 25-5-55.”

**Note:** The applicant’s site plan map denotes the location of the Independent Wastewater System (IWS) or septic tank will be located “makai” of the dwelling. The septic system’s design “below grade” and position within the property will be subject to State-DOH requirements.

**March 22, 2007-Site Inspection.** The subject TMK property is vacant and exhibits approximately 7% to 8% slope from the front boundary line along the Old Mamalahoa Road to existing “center of land” or proposed building area midway between front and rear boundary lines, whereupon, the applicant or owner proposes to locate a proposed 2-story dwelling and parking for 2 vehicles within an open-garage. According to the applicant and site inspection, the property’s slope from this “center of land” to the rear boundary exceeds 8%. Access to the property from the Old Mamalahoa Road is limited and on-site driveway should be located along the property’s southerly side boundary line shared with TMK: 7-5-016:045. The building (old coffee drying shed) nearest the “center of land” or proposed building site is situated approximately 40 feet away on adjoining property (TMK: 7-5-016:013). The applicant or current owner is aware of existing coffee orchard(s) and other large orchard trees (avacado, etc.) situated on adjoining property TMK: 7-5-016:045 and intention by adjoining property owner(s) of TMK: 7-5-016:013 to plant coffee trees or other orchard crops near and along the subject TMK side boundary line or common boundary line shared with TMK: 7-5-016:013.

3. **County Building Records:**

The subject TMK property is vacant.

4. **Agency Comment and Requirements-VAR 07-011:**
  - a. The State Department of Health (DOH) memorandum is dated March 19, 2007. (Refer to DOH memorandum in variance file).
  - b. The Department of Public Works (DPW) memorandum dated February 27, 2007 was received on April 2, 2007. This DPW memorandum states in part:

“We have reviewed the subject application and have no comments or objections.”
5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners were received by the Planning Department. For the record, the first and second notices were mailed on February 15, 2007 and February 26, 2007, respectively, by the applicant. In addition to the foregoing, the applicant forwarded copy of a “CORRECTION NOTICE” dated February 27, 2007 mailed on or about February 28, 2007 to a list of surrounding property owners for the record. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 28, 2007.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following comments or objection letters were received:
  - 6a. Objection letter from Yuris Nora dated March 2, 2007 received on March 6, 2007.
  - 6b. Objection letter from Ray Takeguchi dated March 12, 2007 received on March 12, 2007.

Note: Given comments and concerns received, a site inspection of the subject TMK property or proposed building site was completed on March 22, 2007. The concerns and position of a “stonewall” along the property’s (southerly) side boundary and uses and other features including views, drainage, etc. on adjacent properties were considered. Refer to further discussion below.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the owner, is requesting a variance to permit portions of the proposed 2-story dwelling to be allowed and require any future additions or other buildings to be a minimum 10 feet side yard and attendant 5 feet side yard open requirement in lieu of the minimum 15 feet side yard and attendant 10 side yard open space requirement. The variance application includes a site plan map, prepared by the applicant, denoting the revised building envelope and proposed dwelling location on the property.

The March 2007 inspection of the property confirms the property's access from the Mamalahoa Road is limited and the "on-site" driveway to the dwelling should straddle the property's Kau boundary line. The property's "lay of the land" or slope, "non-conforming" narrow lot width, and unusual lot geometry limits building options. There is a small "center of land" or "flat area" within the subject TMK property between the property's front and rear boundary lines. Given the property's sloping nature and relationship with public road and lot geometry, portions of a dwelling constructed on the "center of land" with minimum 10 feet side yard(s) and attendant minimum 5 feet side yard open space(s) would not be detectable or highly visible from the "old" Mamalahoa Highway and surrounding neighborhood. The variance application includes a survey map showing rock walls and site plan prepared by the applicant denoting the proposed building envelope and dwelling's "footprint" (living area and parking carport-garage) and projections (roof eaves, etc). In addition to the foregoing, the applicant forwarded a current floor plan study showing the upper and lower living levels including the "open garage".

### **ALTERNATIVES**

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

1. Designing the proposed dwelling improvements to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 1-A with adjoining properties (TMK: 7-5-016:045 along the property's south boundary line or TMK: 7-5-016:056 along the property's north side boundary line) and resubdivision to modify the common side property lines 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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The property's geometry was created before property was zoned by the County or the 1967 Zoning Code. After considering the character of the adjoining properties and surrounding neighborhood including surrounding building patterns, it is felt that the request for variance from the minimum side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood.

The Planning Director acknowledges the objections and concerns cited by surrounding property owners contacted. However, access to the property is limited, and the unusual lot geometry and "lay of the land" or site topography limits building options. Property access and on-site driveway location is limited to along the southerly side boundary line. The proposed dwelling's position or applicant's request to specify minimum 10 feet side yard and attendant 5 feet side yard open spaces for proposed dwelling and future building improvements will not depreciate or detract from the character of the surrounding neighborhood or surrounding land pattern. Therefore, in view of the property's size and unusual lot geometry, topography, etc., it is felt that the variance to allow the proposed dwelling and request for a 10.00 feet minimum side yard(s) and minimum 5.00 feet side yard open spaces for the dwelling including future additions or accessory buildings will not detract from the character of the immediate neighborhood or the subdivision.

Given the property's non-conforming land area and lot geometry, and foregoing findings, the variance from minimum (side) yards and attendant minimum open space requirements 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.

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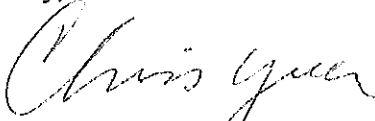
3. The approval of this variance permits proposed 2-story dwelling to be constructed on the subject TMK property. The proposed "HOUSE" or building improvements on the property require minimum 10 feet side yard(s) and attendant 5 feet side yard open space(s).

Due to the property's topography and average lot width limiting building location and design options on subject TMK property and other unusual circumstances related to the property's access from the "old" Mamalahoa Highway and position of the on-site driveway, etc. on the property, future additions to proposed 2-story dwelling or accessory building(s) shall be subject to minimum 10.00 feet side yard(s) and attendant minimum 5.00 feet side yard open space requirements. The minimum 25 feet front yard, minimum 25 feet rear yard, and minimum 10.00 feet side building setback line(s) and attendant minimum 5.00 feet side yard open spaces are denoted and identified on the variance site plan map in the subject variance file.

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, and VAR 07-011.

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  
Yuris Nora  
Ray Takeguchi