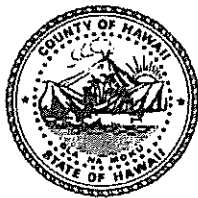


Harry Kim  
Mayor



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

June 21, 2007

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE-VAR 07-024**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: MICHAEL T. FARLEIGH, ET AL./**  
**THE L.A. AND B.H. POWELL TRUST**  
**Request: Variance from Chapter 25, Zoning,**  
**Minimum yards**  
**Tax Map Key: 7-6-023:067**

After reviewing your variance application, the Planning Director certifies the approval of VAR 07-034 subject to variance conditions. The variance allows a portion of "TWO STORY RESIDENCE" to remain on Lot 109-A, "AS-BUILT", with minimum 19.00 feet front yard in lieu of the property's minimum 20.00 feet front yard along Kaheiau Street according to variance application's survey map dated and signed on February 21, 2007. The variance is from the TMK property's minimum front yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property containing 16,717 square feet is Lot 109-A of "KOMOHANA KAI SUBDIVISION", Unit I, being a portion of Royal Patent 4475, L. C. Award 7713 Apana 43 to V. Kamamalu, and situated at Holualoa 1 & 2, North Kona, Hawaii. The subject TMK property's address is 76-6302 Kaheiau Street.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC). The subject TMK

property is within the Special Management Area (SMA). However, the subject TMK property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department-Kona on March 22, 2007. The variance application's site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc. The variance site plan map, signed and dated February 21, 2007, denotes a portion (corner) of the "TWO STORY RESIDNECE" is within the minimum 20 feet front yard of "LOT NO. 109-A" or subject TMK property.

The applicant's background report dated March 23, 2007 states in part:

"The dwelling was built under Building permit No. 05812, issued March 18, 1983.

Owners were unaware of any violation until survey conducted by Pattison Surveys revealed the encroachment on February 21, 2007, while property is in escrow subject to conveyance.

No malice and intent in the placement of footprint could be substantiated during the undersigned's site inspection; nor would owner or contractor have benefited from such violation in any way.

It is fair to state that the small violation, limited to the extreme Northeast corner only, is the result of an honest staking error.

The 12" front yard setback violation, limited to the extreme Northeast corner only, is the result of an honest staking error."

**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, "FENCE" (chain-link), and any landscaping, etc. along or straddling common boundary lines.

**Authorization Letter:** The applicant submitted a letter dated June 7, 2007 signed by current owners-Michael T. Farleigh and Christina J. Farleigh for the variance file. This letter was incorporated into subject variance file on or about June 12, 2007.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 1-Building Permit (K05812), 1-Electrical Permit (EK05228), and 2-Mechanical (MK38372 and MH38372) or Plumbing Permits were issued to subject TMK property. It appears that the residence or dwelling on "LOT NO. 109" was built pursuant to a building and associated construction permits issued between 1983 and 1984.

4. **Agency Comments and Requirements-VAR 07-024:**

- a. The State Department of Health (DOH) memorandum is dated May 10, 2007. (Refer to DOH memorandum in subject variance file).
- b. The Department of Public Works (DPW) memorandum dated May 7, 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 May 7, 2007 states in part:

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

Others: Electrical permit EK 05228 and Plumbing permits MH 38372 and MK 04469 are still active."

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. According to the affidavits submitted by the applicant, the first and second notices were sent on March 22, 2007 and May 4, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 26, 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 owner, submitted the variance application to address or resolve the dwelling encroachment within the property's minimum 20 feet front yard. The variance application's site plan map was prepared by a surveyor and denotes the position of the "TWO STORY RESIDENCE" and other site improvements, "AS BUILT", on "LOT NO. 109". The owner(s) became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owner(s) or builders to deliberately create or intentionally allow these building encroachments to be built within the affected front yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1983 and 1984, the dwelling encroachment (corner) within the property's front yard went unnoticed.

### **ALTERNATIVES**

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

1. Remove the building encroachment or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot No. 109 with the Right-of-Way (Kaheiau Street) fronting the property 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 24 years ago within the minimum front yard are not physically and/or visually obtrusive from the adjoining property(s) or right-of-way (Kaheiau Street). It appears that the portion of the 24 year old dwelling (corner) does not depreciate or detract from the character of the surrounding

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 5  
June 21, 2007

neighborhood and surrounding land patterns. Therefore, it is felt that the dwelling (corner) encroachment into the property's 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 April 18, 2007 and additional time to consider DPW requirements and verify property ownership (incorporated into the file on June 12, 2007) was necessary. The applicant agreed to an extension of time to June 8, 2007 or "shortly thereafter" to render a decision on the subject variance application.

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 NO. 109" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "TWO STORY RESIDENCE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 109" according to the variance site plan map dated and signed February 21, 2007.

The applicant or current owner(s) shall contact the DPW-Building Division in Kona regarding their memorandum dated May 7, 2007 and status of the following "active" permits: Electrical Permit-EK05228 and Plumbing Permits-MK04469 and H38372, issued to subject TMK property. These active or "open"

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 6  
June 21, 2007

construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division-Kona on or before September 1, 2007 and/or prior to sale of the property 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.

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:mad  
P:\WP60\WRY\FORMLETT\VAR07-024ZCSETBACKAPPTMK76023067.BC

xc: Real Property Tax Office-Kona  
DPW-Building Division-Kona