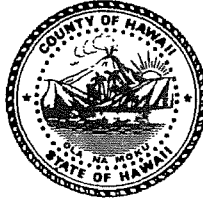


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

January 14, 2010

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

Dear Mr. Conventz:

SUBJECT: VARICANCE APPLICATION – VAR-09-030
Applicant: KLAUS D. CONVENTZ
Owners: Thomas J. Scheffel, ET AL.
Request: Variance from 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
TMK: 6-8-005:002, LOT 59

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-030 (VAR: 09-030), subject to variance conditions. The variance to allow portions of the 1-story single family dwelling to remain on Lot 59 with a minimum 17.56 to a minimum 19.30 feet rear yard in lieu of minimum 20.00 feet rear yard and attendant minimum 14.00 feet front yard open space requirements measured from the property's rear boundary line and according to the survey map signed and dated March 22, 2000 and updated on July 7, 2009. The variance is from the subject property's minimum 20.00 feet rear yard and minimum rear yard open space requirements 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 property, consisting of approximately 11,799 square feet of land, is situated within Waikoloa Village, Unit 1-A, File Plan 1188 at Waikoloa, South Kohala, Hawaii. The subject property's street address is 68-3770 Kimo Nui Street.
2. **Zoning:** The subject property is zoned Single Family Residential –10,000 Square Feet (RS-7.5) by the County and designated Urban or U" by the State Land Use Commission (LUC).
3. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on July 23, 2009 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Richard Cassera LPLS. The variance site plan or survey map denotes that portions of the single family dwelling are built into the property's minimum 20-foot wide rear yard setback.
4. **County Building Records:** Hawai'i County Real Property Tax Office records indicate that a building permit (860926) was issued on June 3, 1986 for the construction of a 3 bedrooms, 2 1/2 - bath Single Family Dwelling. Two additional building permits were issued for an addition and Solar System (Permit No. 955467 and Permit No. 975566).
5. **Variance Application (VAR: 09-018)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated August 27, 2009 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. The Department of Public Works (DPW) Memorandum dated September 4, 2009 states:

“We reviewed the subject application and have no comments on or objections to the proposed variance.
6. **Notice to Surrounding Property Owners.** A copy of first and second notices sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first notice was mailed on July 23, 2009 and the second notice was

mailed on August 28, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 31, 2009.

7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant on behalf of the owner submitted the variance application to address or resolve the encroachment of the single family dwelling into the 20 feet rear yard setback as required by the Zoning Code.

Pursuant to the applicant's background information, "The owners were unaware of any encroachment when they purchased the property and would not have discovered any problems affecting the Single family dwelling until an as-built survey, conducted on March 22, 2000 with an update on July 7, 2009 by Richard H. Cassera LPLS, revealed the encroachments. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling into the property's minimum 20 feet rear yard setback required by the Zoning Code.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front and rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the as-built single story dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

Another alternative is to consolidate the subject property with the adjoining rear property and resubdivide the property to modify property lines and adjust minimum yard setbacks.

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.

The applicant's variance application was acknowledged by letter dated August 24, 2009; and additional time to review the application was required. The applicant has granted the

Planning Department and the Planning Director an extension of time for decision on the Variance Application to January 15, 2010.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the 22 years of existence of the structure. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance application is approved subject to the following variance 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. The existing dwelling constructed upon the subject property ("Lot 59") will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map dated March 22, 2000. The approval of this variance permits the existing dwelling to remain upon the subject TMK property or "Lot 59" in accordance to the survey map dated March 22, 2009.
4. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject TMK property, subject to provisions of the Zoning Code or State law which may change from time to time.
5. Should the existing dwelling upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

Klaus D. Conventz
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6. 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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 09-030 null and void.

Sincerely,

BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)

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