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Director

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County of Hawai'i

PLANNING DEPARTMENT

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May 14, 2010

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-09-032

Applicant: KLAUS D. CONVENTZ

Owner: Dale Okuno

**Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-7, Minimum Yards, (2) (B), and
Article 4, Division 4 Section 25-4-44, Permitted
projections into yards and open space requirements, (a)**

TMK: 6-9-006:047, Lot 160

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-032 (VAR: 09-032), subject to the following conditions. The variance allows portion of the two-story dwelling (duplex) constructed upon Lot 160 to remain, "As-Built", according to the survey map dated June 9, 2009. The variance allows for the two-story dwelling or duplex dwelling to remain on Lot 160 with a minimum 4.20 feet to a minimum 6.3 feet side yard in lieu of the minimum 10.00 feet side (south yard) and attendant minimum 5.00 feet side yard open space requirements according to the dimensions denoted on the survey map. It also allows for the enclosed tile deck along the southwest corner to remain with a minimum 4.20 feet to a minimum 4.90 feet side yard in lieu of the minimum 10 feet side yard and attendant minimum 5.00 feet side yard open space requirement. The variance is from the subject property's minimum front and side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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BACKGROUND AND FINDINGS

1. **Location:** The subject property, (TMK: 6-9-006:047, Lot 160) consisting of approximately 11,498 square feet of land, is situated within Puakō Beach Lots, (HTS Plat 414-A), being the whole of Grant 13575 to Mae Umeyo Kamita Kuwahara, and situated at Lalamilo, Waimea, South Kohala, Hawaii. The subject property's street address is 69-1967 Puakō Beach Drive.
2. **Zoning:** The subject property is zoned Single Family Residential –10,000 Square Feet (RS-10) 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 Wes Thomas Associates. 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 front yard and 10-foot wide side yard setback.
4. **County Building Records:** The applicant stated: *"The initial single family dwelling was built under Building Permit No. 20356, issued April 07, 1958, with an addition under Building permit No. 28851, issued February 28, 1964, with another addition and reconfiguration of the footprint under Building Permit No. 811618, issued June 26, 1981, with a conversion to duplex (CPR/Ohana) under Building permit No. 905359, issued March 02, 1990, including change and additions to the existing footprint. All Building permits received final inspections."* No building permits could be found for the lean-to storage addition on the south side of the dwelling and the one-story storage structure along the northerly boundary.
5. **Variance Application (VAR: 09-031)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated September 11, 2010 states:

"The existing individual wastewater system can continue to serve the existing dwelling. However, wastewater generated from any additional dwelling unit building must meet the wastewater rules in effect at the time of building permit application."
 - b. The Department of Public Works (DPW) Memorandum dated September 4, 2009 states:

“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).

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.”

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 was 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 10 feet side yard setback and attendant minimum 5 feet open space as required by the Zoning Code.

Pursuant to the applicant's background information, “The owner was unaware of any encroachment when he purchased the property and would not have discovered any problems affecting the Two Story Duplex until an as-built survey, which was completed on June 9, 2009 by Wes Thomas Associates, 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 10 feet side yard setbacks required by the Zoning Code.”

ALTERNATIVES

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

Remove the building encroachments and/or redesign or relocate the as-built two-story duplex 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 TMK property with the abutting TMK property and resubdivide the property to modify boundary lines and minimum yards to meet the Zoning Code.

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. Additional time to review the variance application was required. The applicant granted the Planning Director additional time to render a decision on the Variance Application to May 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 29 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 Property 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, 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 160") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map dated June 9, 2009. The approval of this variance permits the existing dwelling to remain upon the subject property or "Lot 160" in accordance with the survey map dated June 9, 2009.
4. The lean-to storage addition which is encroaching into the side setback along the southerly boundary was built without a building permit; therefore, it must be removed. Although, the single-story storage building along the northern boundary complies with the side setback and open space requirements, it was built without a building permit. The owner must resolve the building permit issue by either obtaining the proper building permits or removing the structure permanently. These violations must be addressed within three (3) months of the date of this letter.
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.
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 09-032 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN/WRY:kwr

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xc: Kona Office
Randy Lovato – Kona Zoning Inspector
Real Property Tax Office (Kona)