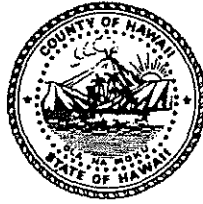


William P. Kenoi
Mayor



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

June 7, 2010

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-10-004
Applicant: KLAUS D. CONVENTZ
Owners: HIDEYUKI BUSUJIMA/CHARLES ESSERMAN
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: 7-2-012:019, LOT D

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-004 (VAR: 10-004), subject to variance conditions. The variance will allow portions of the "Single Story Dwelling" constructed on Lot D with a minimum 16.9 to 18.86 feet front yard setback and attendant roof eaves with a minimum 11.6 feet front yard to minimum 13.3 feet front yard open space to remain upon the subject property in accordance with recent survey map. The applicant requests a variance to permit portions of the dwelling "to remain in place" into and upon the property's affected minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space required by the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (1)(A). 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 22,900 square feet of

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land, is situated within the Hualalai "K-1" Subdivision, Kaupulehu, North Kona, Hawai'i. The subject property's street address is 72-190 Waiulu Street.

2. **Zoning:** The subject property is zoned Resort-Hotel – 2.25 (V-2.25) 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 February 4, 2010, 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 Roger D. Fleenor, LPLS, denotes the portions of the "Single Story Dwelling" built into the minimum 20 feet front yard setback.
4. **County Building Records:**
 - a. Hawai'i County Real Property Tax Office records indicate that a building permit (995286) was issued on March 17, 1999 for the construction of a single story dwelling consisting of 4 bedrooms, 4½ -baths.
5. **Variance Application (VAR: 10-004)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated May 11, 2010 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The Department of Public Works (DPW) Memorandum dated May 19, 2010 states:

"Building shall conform to all requirements of code and statutes pertaining to building construction."
6. **Notice to Surrounding Property Owners.** A copy of first and second notices was sent by the applicant via USPS to surrounding property owners. According to the affidavit submitted to the Planning Department the first notice was mailed on February 4, 2010 and the second notice was mailed on May 17, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 13, 2013.

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7. **Comments from Surrounding Property Owners or Public.** A letter dated February 16, 2010, was received from Mr. Jay Ueda, Director of Development, Hualalai Resorts, recommending approval of the variance.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address and/or resolve the existing single story dwelling encroachments within the property's minimum 16.9 feet to 18.6 feet front yard setback, in lieu of the minimum 20.00 feet front yard setback, and attendant 11.6 to 13.33 feet front yard open space in lieu of the minimum 14.00 open space to remain upon the subject property in accordance with recent survey map. The variance application's site plan denotes the location of the single story dwelling situated on "Lot D". Pursuant to the applicant's background information, the owners were unaware of any encroachment until an "As Built" survey was conducted on January 18, 2010 by Roger D. Fleenor, LPLS revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single story dwelling into the property's minimum 20 feet front yard and attendant minimum 14 feet front yard open space 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 2 story dwelling or 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 property with the road right-of-way (Waiulu Street) fronting the subject property and resubdivide consolidated property to modify property lines and adjust minimum front yard setback. It is felt, that this option is not practical and reasonable

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.

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 11 years of existence of the structure. Also, no 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.
4. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
5. The existing dwelling constructed upon the subject property ("Lot D") will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the existing dwelling to remain upon the subject property or "Lot D" in accordance to the survey map dated April 20, 2009.

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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 10-004 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)