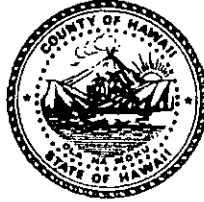


William P. Kenoi
Mayor



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

August 23, 2011

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

Dear Mr. Conventz:

SUBJECT: VARIANCE: VAR-10-046
Applicant: KLAUS D. CONVENTZ
Owners: SETH BLUME, ET AL
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, (a)(2)(B), Section 25-5-44 Permitted Projections into yards and open space requirements, (a)
TMK: 7-5-033:102 (Lot 107)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 10-046, subject to conditions. The variance will allow portion of the existing 2-story single-family dwelling including garage, lanai and deck to remain on Lot 107, with a side yard setback ranging from 8.7 to 9.4 feet and attendant 4.7 feet open space, in lieu of the minimum 10 feet side yard setback and minimum 5 feet attendant open space requirement. The variance is from the subject property's minimum side yard and side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B), Section 25-5-44, Permitted Projections into yards and Open Space Requirements (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 15,000 square feet in land area and is situated in the Kailua View Estates, at 'Auhaukea'e 2nd, North Kona, Hawai'i. The subject property is zoned Single Family Residential – 15,000

- square feet (RS-15) by the County and designated Urban (“U”) by the State Land Use Commission (LUC). The property’s site address is 75-394 Hoene Street
2. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 29, 2010. The variance application’s site plan map is drawn to scale, and prepared by KKM Surveys and denotes the position of the existing single family home.
 3. **County Building Records.** Hawai’i County Real Property Tax Office records indicate that a building permit (895551) was issued on May 4, 1989 for the construction of a two-story single family dwelling consisting of 3 bedrooms, 2-baths.
 4. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 23, 2010 (refer to memorandum in variance file).
 - b. No comments were received from the Department of Public Works – Building Division as of this date.
 5. **Public Notice.** The applicant submitted copy of notice sent to surrounding property owners, including affidavits, stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on November 29, 2010 and December 29, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2010.
 6. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter dated December 7, 2010 sent by Margo Elliopoulos.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property’s minimum 10 foot side yard setback and open space requirement. The variance application’s site plan denotes the location of the as-built 2-story single family residence upon “Lot 107”. The current owners have stated in part: *“Owners were unaware of any problems, when “As-built” survey by KKM Survey conducted on November 18, 2010, revealed the setback violations.*

Mr. Klaus D. Conventz
Page 3
August 23, 2011

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

The encroachments were obviously caused by a staking error, however are rather miniscule, ranging from 0.60 feet at the Northeast corner to 1.30 feet at the Southeast corner relative to the required setback, while the clear space violation is 0.30 feet, limited to the Southeast corner only.

The violations are visually not perceptible from neighbor lots or public lands. In addition, it should be pointed out that otherwise the provisions of Section 25-2-51 would also apply in their entirety."

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments in the affected side yard of the subject property include the following actions:

1. Remove the building encroachments and/or redesigning or relocating the structure 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.*
2. Consolidate the subject property with adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the location of the encroachments, consolidation/resubdivision with the adjoining property would not be practical.*

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision or development 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 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 past 22 years

of existence of the structure.

The variance application was acknowledged by letter dated December 20, 2010, additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the variance application.

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. 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 change from time to time.
4. The structure does not meet the minimum side yard setback requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map.
5. Should the structure upon the subject property be destroyed by fire or other natural causes, the replacement 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. All other encroachments not covered by Variance-10-046 must be rectified or removed within six month of the issuance of this variance.
7. 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.

Mr. Klaus D. Conventz
Page 5
August 23, 2011

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance- 10-046 null and void.

Sincerely,

A handwritten signature in black ink that reads "BJ Leithead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

LHN:nci
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xc: Real Property Tax Office (Hilo)