

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
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September 16, 2011

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

Dear Mr. Conventz:

SUBJECT: VARIANCE - VAR-11-035
Applicant: KLAUS D. CONVENTZ
Owners: ROBERT E. BAILEY
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: 7-7-013:026 (Lot 86)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 10-035, subject to conditions. The variance will allow portion of the existing 2-story single-family dwelling to remain on Lot 86, with a northerly side yard setback of 8.6 feet and southerly side yard setback of 5.00 feet, in lieu of the minimum 10.00 feet side yard setback. 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 10,000 square feet in land area and is situated in the Sunset View Terrace Lots, Unit 2, Subdivision, at Holualoa 4th, North Kona, Hawai'i. The subject property is zoned Single Family Residential – 10,000 square feet (RS-10) by the County and designated Urban ("U") by the State Land Use Commission (LUC). The property's site address is 77-6474 Marlin Road.

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2. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 12, 2011. 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 (1233) was issued on March 12, 1975 for the construction of a two-story single family dwelling consisting of 2 bedrooms, 4-baths.
4. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated August 9, 2011, 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 July 11, 2011 and August 15, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 12, 2011.
6. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 86". The applicant have stated in part: "*Owner was unaware of any encroachment until a survey conducted by KKM Survey revealed on June 21, 2011 the violations while the property is in escrow.*"

The violation is undoubtedly caused by a contractor error in the staking of the layout. Although the encroachment of the southerly lean-to style 1-story storage is somewhat larger, the actual house's encroachment is rather small with 1.40 or 17 inches.

After 36 years (+) it is certainly not entirely possible to re-construct the events leading up to the encroachment problem.

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The lot is rather steeply sloping East to West, which makes both tool areas essential for the maintenance of the property.

The encroachments are visually not perceptible from neighbor lots or public view, while the encroachments have rather very little impact on lighting and airflow between the structure and the property line."

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 pre-scribed 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/resubdivison 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 36 years of existence of the structure.

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

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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 wall encroachments fronting this property and within the public right-of-way 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance 11-035 null and void.

Sincerely,



BJ LEITHEAD TODD

Planning Director

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xc: Real Property Tax Office (Hilo)