

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

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

November 7, 2011

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

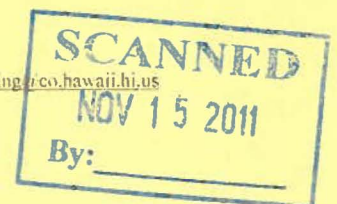
Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-11-049
Applicant: KLAUS D. CONVENTZ
Owners: BEVERLY JAMES
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: 8-5-002:007, LOT B

After reviewing your variance application, the Planning Director certifies the **approval** of variance VAR-11-049, subject to variance conditions. The variance will allow the existing "As-Built" Quonset hut style storage and workshop building to remain on Lot B with a 3.75 side yard setback along the north boundary line and 9.35 side yard setback from the south boundary line in lieu of the minimum 20-foot side yard setback and attendant minimum 14-foot side yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(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 1.53 acres of land, is situated at Kealia 1st & 2nd, South Kona, Hawai'i. The subject property's streets address is 85-4522-D Mamalahoa Highway.



NOV 15 2011

2. **Zoning.** The subject property is zoned Agricultural – 5 acres (A-5a) by the County and designated agriculture or “A” by the State Land Use Commission (LUC).
3. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on September 15, 2011 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 the Thomas G. Pattison L.P.L.S.. The variance site plan denotes the “as-built” Quonset hut-style storage building constructed into the minimum 20 feet side yard setback and 14 feet open space requirement.
4. **County Building Records.**
 - a. None
5. **Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated October 6, 2011 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. No comments have been received from Department of Public Works – Building Division as of this date.
6. **Public Notice.** Copies of first and second notices were 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 September 15, 2011, and the second notice was mailed on October 12, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 2011.

No other written comments or objections from surrounding property owners or general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance application would allow for the existing “as-built” Quonset style storage and workshop to remain on Lot B. Pursuant to the applicant’s background information, “The owner purchased the property on November 3, 2006... and was unaware of any problem, when an “As Built” survey by Pattison Land Surveying, Inc on October 27, 2010, revealed the setback violation...”

The applicant also states that the subject property and surrounding properties are heavily overgrown making the location of the survey markers difficult. The topography of the

subject property ranges from relatively flat land to slightly sloping and heavily sloping grade with deep cuts. The Quonset hut was built by the previous owner without permit. No evidence has been found to show indifference or premeditation by the builder to intentionally construct this building into the property's minimum 20 feet side yard and attendant minimum 14 feet side yard open space required by the Zoning Code.

ALTERNATIVES

Alternatives available to the current owner to avoid any encroachments into the affected side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the as-built quonset hut 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 properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the topography of the subject property, in relationship to the adjoining properties, it will be impracticable and unrealistic to consolidate/resubdivide these properties.*

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 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 property owners of adjacent parcels have obtained reduced setbacks due to steep slopes. 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.

Klaus D. Conventz
Page 4
November 7, 2011

2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i 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 approval of this variance is only from the Zoning Code's minimum side yard and attendant side yard open space requirements. The approval of this variance allows the existing Quonset hut structure to be maintained on "Lot B" (the subject property), pursuant to the variance application's site plan map and supplementary drawings.
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 'as-built' Quonset hut situated on "Lot B" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval will allow the existing structure to be on the subject property in accordance to the plot plan submitted on September 15, 2011.
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 11-049 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

O:\Variances\Zone8\VAR-11-049TMK8-5-002-007James.doc

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