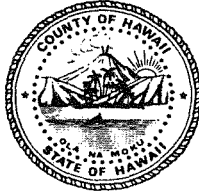


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2905 2632

July 18, 2001

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1215 WH(VAR 01-020)**

**Applicant: KLAUS D. CONVENTZ**  
**Owners: KENNETH & SUSAN VAN RADEN**  
**Request: Variance from Minimum Yards,**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 7-7-009:068, Lot 68**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1215 allows portions of the existing dwelling to remain on the subject TMK property, "AS BUILT", pursuant to a site plan dated March 7, 2001. The building encroachments are permitted to remain with a minimum front yard of 19.5 feet from the front boundary line and 13.6 feet open space in lieu of the minimum 20 feet front yard and minimum 14 feet open space requirement pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (A) and, Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

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## BACKGROUND AND FINDINGS

1. The subject property containing 12,875 square feet is Lot 68, of the "Sunset View Terrace Lots", Unit I, Portion of Holualoa 4<sup>th</sup>, Portion of L.C. Award 7228, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by Land Use Commission (LUC).

2. The applicant submitted a variance application on March 9, 2001 and attached a written explanation or narrative, "SPECIAL & UNUSUAL CIRCUMSTANCES", dated March 8, 2001. This narrative states in part:

"Subject dwelling was built under Building Permits 05194 in 1982, with additions and alterations under Permit Nos. 05277 and 05239, all under predecessor in the property.

The current owners were unaware of any problem when a survey of March 7, 2001 by KKM-Surveys revealed a very small encroachment of .6' or 7.2" (inches) into the front setback, limited, however, to the extreme southeast corner of the dwelling, together with a .4' or 4.8" inches violation of the open space at the Southeast corner of the carport eaves.

Certainly, the violations are visually not perceptible from public view or neighbor lots. Any structural correction would be extremely costly, and very unattractive."

3. The site plan drawing, drawn to scale by Kevin McMillen, LPLS, and certified on March 7, 2001, identifies the location of the existing dwelling, eave(s), and other existing site improvements on LOT 68. The site plan identifies the building envelope within dashed lines prescribed by the Zoning Code and denotes the distance(s) between the building and eave encroachments and the front boundary line.

Note: The site plan also identified the location of existing CRM Walls(s), Concrete Driveway(s), and other wall(s) and any driveway encroachments on LOT 68 and within the subject TMK property and adjacent (LOTS) or TMK property(s).

Furthermore, the presence and location of a cesspool or Individual Wastewater System (IWS) was not denoted or identified on the site plan submitted by the applicant.

4. A copy of the approved original detailed building construction plans to construct the existing dwelling and other site improvements that were approved by the County and other government agencies in 1982 were not submitted with the variance application.

Note: Any existing and free-standing perimeter CRM walls or retaining CRM wall improvements less than six (6) feet in height and located on and within the subject TMK property may not require any building permit(s) from the Department of Public Works (DPW). The subject variance does not address the location of the existing CRM walls, concrete driveways, or other boundary encroachments identified on the site plan submittal or other building permit issues which may arise due to the location of existing perimeter walls, access driveways, and other boundary encroachments built on the subject TMK property line or within adjacent (LOTS) property(s). The existing wall and other encroachments within the right-of-way (Walu Road) must be removed and other outstanding building permit(s) must be resolved between the DPW and the applicant or the property owner(s) before any further building permit(s) are requested or issued by the DPW. Any boundary or perimeter walls straddling the subject TMK property's boundary lines or access driveway encroachments must be addressed and resolved between affected parties or between the current owner(s) and adjacent property owner(s).

5. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated October 26, 2000 stating:

"This is to certify that Van Raden, Kenneth /Susan (Owner-of-record) has paid all real property taxes due the County of Hawaii up to and including 6/30/2001."

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6. The State Department of Health (DOH) memorandum dated April 3, 2001, in the subject variance file states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

7. The Department of Public Works (DPW) memorandum dated December 20, 2000, states in part:

"We have reviewed the subject application and offer the following comment:

1. Please refer to the attached Building Division comments dated March 27, 2001.
2. Any encroachments within the County right-of-way should be removed.

If you have any questions please contact Kiran Emler of our Kona office at 327-3530."

The attached DPW memorandum dated March 27, 2001 includes the following comments or following statements:

"We oppose the approval of the application for the reasons noted below.

The 975043, EK04671 & EK04897 permit for the subject dwelling was never finalized."

8. Proof of mailing a first and second notice was submitted to the Planning Department on March 9, 2001 and March 22, 2001, respectively. For the record, it appears that the first and second notice was mailed from Holualoa on March 9, 2001 and March 22, 2001, respectively, by the applicant.

The Planning Department did not receive any oral or written objections to the subject variance request.

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9. The Kona Planning Department received a letter from the applicant on March 23, 2001 addressing the processing of the subject variance request and other pending variance applications submitted by the applicant. In this letter, "CONFIRMATION", dated March 22, 2001, the applicant agreed to an extension of time to process the subject variance application and render a decision on the subject variance and other pending variance applications. A copy of the applicant's letter is part of the subject variance file.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

The building problems were discovered during the sale of the subject property. The applicant submitted a recent survey map/site plan that identifies the location of the existing dwelling and other site improvements. The site plan identifies the distance between portions of the dwelling and attendant roof eaves from the affected boundary line. A portion of the dwelling was constructed and encroaches into a side yard. It appears the previous and current owner(s) were unaware of the building encroachment problem.

Therefore, considering the foregoing facts and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the current owner/applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

At this time, there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the applicant and owner(s) to address and correct the existing building encroachments include the following actions:

1. Removing portions of the dwelling and attendant roof eave within the front yard and open spaces.
2. Redesign and relocate portions of the existing multi-story dwelling and eaves to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose removal of the existing dwelling's corner and affected roof eave constructed by the previous owner(s) or "predecessor" would seem unreasonably harsh and uneconomical at this time. The removal of the building encroachments and attendant roof eave(s) constructed by others may disrupt the dwelling's structural integrity, internal room circulation, and change the over exterior character of the dwelling.

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The circumstances to permit and establish the existing building improvements and encroachments within the subject TMK property's front yard and within the rights-of-way are unique and were not perceptible until the modern survey and map were completed. No evidence was found to show indifference or premeditation by the current owner(s) or the applicant to deliberately build or intentionally allow the building encroachments and problem to occur.

It appears that the encroachments identified within the front yard were constructed approximately 20 years ago, and were not physically or visually obtrusive or perceptible from the rights-of-way or adjacent property(s). It appears that the building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. It appears that the dwelling's corner and eave encroachments were building mistakes or were a cumulative misinterpretation of the minimum building front yards or open space requirements by the "predecessor" during original building construction. It appears that building inspections of the property during the life of the building permit(s) issued in the early 1980s did not discover the building encroachments problem(s) or reveal and disclose any irregular building setback problems. Therefore, it is felt that to allow the existing dwelling encroachments to remain within the front yard and open space will not detract from the character of the immediate neighborhood or the subdivision.

The Planning Department acknowledges there may be other design or building alternatives available to the listed owner(s) and applicant beyond those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the current owner(s) or applicant when a more reasonable alternative is available by the granting of the subject variance request.

#### 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) and boundary/property lines. It appears that the existing dwelling and attached roof eaves were constructed under valid building permit(s) issued to the owner(s) in 1982. It appears that the building inspections of the premises, during building construction and throughout the life of the building permit(s) did not disclose any building encroachments or setback irregularities. The applicant and current owner(s) became aware of the encroachment problems after a modern survey was performed and a map showing the dwelling's "AS BUILT" location was presented to the owners for understanding. The applicant and listed owner(s) on the variance application are trying to resolve the dwelling's encroachment problem(s) that were disclosed by the recent survey and survey map.

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The circumstances which permitted the existing building improvements to be built on the property are unique. It appears that the existing building encroachments were built and established within the subject TMK property's front yard nearly 20 years ago.

It appears that existing building encroachments into the affected front yard are not physically and visually obtrusive from the right-of-way or adjacent TMK property(s). It appears the building encroachments do not depreciate or detract from the character of the existing neighborhood and the surrounding land patterns and uses. It appears the existing building (dwelling) encroachment(s) within that affected front yard was a building mistake that occurred in 1982 or was a misinterpretation of the minimum building yards or boundary line(s) by the previous owner(s) or predecessor. Inspection of the property during the life of the building permit(s) issued by the County or other agencies 20 years ago did not discover any building encroachment problem(s) or reveal and disclose any irregular building setback problems. Therefore, it is felt that the existing dwelling encroachments within the front yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by certified letter dated March 20, 2001. Additional time to allow the Planning Director to understand and address agency comments was required. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance.

Based on the foregoing findings, this variance request 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.

#### VARIANCE DECISION AND CONDITIONS

This variance request is approved subject to the following conditions:

1. The applicant or listed owner(s) on the variance application, his/their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), his/their 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. Portions of the existing dwelling will not meet Chapter 25, the Zoning Code's, minimum front yard and open space requirements. The approval of this variance allows the existing dwelling encroachments within the front yard and identified on the site plan submitted with the variance application, dated March 7, 2001 to remain on the subject property. The applicant is required to confer with the Department of Public Works (DPW-Building Division) to address and close the following outstanding Building Permits: 975043, EK04671, and EK04897.
4. The applicant shall confer with the DPW and remove the rock wall encroachments and any other encroachments within the County Right-of-Way (Walua Road) identified on the variance application's site plan dated March 7, 2001. The applicant shall submit proof by way of a letter from the DPW-Engineering Division to the Hawaii County Planning Department on or before October 31, 2001, that the CRM or wall encroachments and any other encroachments within the affected County Right-of-Way and denoted and identified on said variance site plan have been removed. The applicant shall submit proof by way of a letter or memo from the DPW-Building Division that all outstanding building permits issued to previous owner(s) and cited in the respective DPW memorandum have been addressed and closed.
5. The applicant shall address and satisfy Condition No. 3 and 4 before the applicant or current owner(s) submit any further building plans and building permit application(s) for review and approval. Future building improvements and permitted uses on the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

The approval of this variance does not endorse or approve the location of the other existing rock walls or other wall or driveway encroachments on Lot 68 or adjacent TMK property(s) or other Lots identified on the variance application's site plan dated March 7, 2001.

6. No ohana permit shall be granted to allow an ohana dwelling on the subject TMK property and no building permit(s) shall be issued to allow an ohana dwelling unit or second dwelling unit to be constructed or established on the subject TMK property.



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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cps  
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xc: Real Property Tax Office (Kona)  
Kona Office File