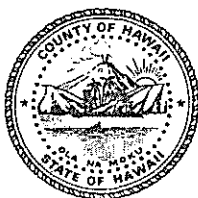


Harry Kim  
Mayor



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 2359

August 7, 2001

Mr. Klaus D. Conventz  
dba BAUMEISTER CONSULTING  
P. O. Box 2308  
Kaihua-Kona, HI 96745

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1223 WH (VAR 01-024)**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: J. SCOTT SPRINGMEIER, JR.,**  
**REVOCABLE TRUST**  
**Request: Variance from Minimum Yards**  
**and Open Space Requirements,**  
**Pursuant to Chapter 25, the Zoning Code**  
**Tax Map Key: 6-4-015:102, Lot 69**

After reviewing your variance application, information submitted, and background information, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1213 allows portions of the dwelling that encroach into property's front yard along Mokuloa Drive, to remain, "AS BUILT". Pursuant to the applicant's site plan dated March 16, 2001, the variance allows portions of the dwelling (house) to remain on Lot 69 with a minimum 28.52 feet front yard and minimum 23.91 feet open space between the attendant roof eaves (building projection) and the affected front boundary line. The subject variance is from the subject property's minimum 30 feet front yard and 24 feet front yard open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (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. **Location.** The subject TMK property, containing 49,877 square feet, is Lot 69, of "MOKULOA", (FILE PLAN 1925), situated in Waimea, South Kohala, Hawaii. The property is also commonly described as TMK: 6-4-015:102, Lot 69. The property is zoned Agricultural (A-1a) and designated Agriculture "A" by the State Land Use Commission.
2. **Application.** The applicants submitted the variance application form, supplemental information, tax clearance, and \$250.00 filing fee check on March 19, 2001.
3. **Site Plan.** The applicant's map or site plan drawing, drawn to scale and dated "3/16/01, was surveyed and prepared by Kendall N.H. Hee, LPLS. The site plan denotes and identifies the existing dwelling and the respective distances between the dwelling and the respective front yard(s). The site plan does not identify the building envelope prescribed by the Hawaii County Zoning Code. Portions of the existing dwelling and attendant roof eaves have been constructed into a 30 foot wide front yard and minimum 24 feet open space requirements along Mokuloa Drive. The "house" or dwelling encroaches 1.48 feet into the respective minimum 30 feet front yard 0.09 feet and the attendant roof eave encroaches into minimum 24 feet front yard open space required by the Zoning Code.

The applicant's site plan drawing does not denote or identify the location of an existing cesspool or other Independent Wastewater System (IWS).

The applicant's site plan drawing denotes and identifies the location of a "cattle fence", hedge, and other site improvements. It appears that portions of an existing "FENCE (CATTLE)" and "PINE TREES" encroach into the "20-FT GOVERNMENT ROAD" right-of-way. The "cattle fence" and "pine tree" landscape encroachments within the right-of-way (Government Road) shall be resolved by the applicant or between respective property owner(s) and the affected government agency.

4. **Building Permit(s).** A copy of the original building permit-BP 900557 and associated County approved detailed building construction plans to construct the dwelling and other necessary site improvements between 1990 and 1991 were not submitted with the applicant's variance application. The building permit was closed on February 21, 1991 by the DPW. (The site plan dated March 16, 2001 shall not be interpreted or construed to imply that the cattle fence or other site and landscaping improvements denoted and located on the site plan were installed or permitted under the building permit issued by the County).
5. **Agency Comments and Requirements.**
  - a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated March 14, 2001 states in part the following:

"TMK(s) (3) 6-4-015-102"

"This is to certify that J. Scott Springmier <sic>(Owner of record) has paid all Real Property Taxes due to the County of Hawaii up to and including 6/30/01."
  - b. The State Department of Health (DOH) memorandum dated June 4, 2001, in the subject variance file states in part:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."
  - c. The Department of Public Works (DPW) memorandum dated June 8, 2001, states in part:

"We have reviewed the subject application and have no comments."
6. **Notice to Surrounding Owners.** A mailing list and affixed mail receipts were received by the Planning Department (Kona Office) on March 19, 2001 and May 31, 2001, respectively. For the record, it appears that the first and second notice(s) were mailed from Holualoa, HI 96725 on March 19, 2001 and May 31, 2001, respectively.
7. **Comments from Surrounding Property Owners or Public.** No written comments or letters regarding the subject variance request were received.

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

In consideration of the applicant's application and findings above, it appears that "corners" and attendant roof eaves of the 2-story dwelling built between 1990 and 1991, approximately 11 years ago, encroach into a front yard and the respective front yard open space requirements of the Zoning Code. The subject TMK property's is a corner lot and has two(2) front yards. The bulk of the dwelling's living area and attendant roof eaves appear to be within the building envelope prescribed by the Zoning Code and meet minimum yard(s) and open space requirements.

The applicant submitted a recent survey map/site plan prepared by a surveyor that identifies the location of the existing dwelling encroachments within the affected front yard and front yard open space. The site plan denotes and identifies the distances between portions of the dwelling's (corners) wall and attendant roof eaves from the front boundary line(s). It appears that that a corner of the 2-story dwelling was inadvertently built approximately 1.48 feet into one of the property's front yards, and the corresponding open space shown between the eave corner and the front boundary line is 23.91 feet. It appears that the current owner(s) were unaware of any building encroachment issues or problem.

Therefore, considering the applicant's submittals, findings, and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the applicants of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the current and best use 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 or current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove or truncate the "corners" and attendant roof eaves that encroach into the affected front yard.
2. Redesign and relocate the existing dwelling to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose removal of these "corners" to abbreviate or modify the attendant roof eave(s) would seem unreasonably harsh and uneconomical at this time. The removal of the existing encroachments or relocation of the dwelling may disrupt the dwelling's structural integrity, change internal room lighting and air circulation, and change the building's overall building geometry and exterior character.

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No evidence has been found to show indifference or premeditation by the applicant or current owner(s) to deliberately build or intentionally allow the building encroachment problems to occur. The applicant submitted the variance application to address and resolve the dwelling's encroachment problem within the affected front yard.

The Planning Department acknowledges there may be other design or building alternatives available to the applicants and owners 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 applicant and current owners when a more reasonable alternative is available by the granting of the subject variance request.

The existing "cattle fence" may be less than six (6) feet in height and existing landscape improvements identified on the applicant's site plan may not require any building permits from the DPW. The "cattle fence" and "pine trees" encroachments straddling the front property line and into the "20-FT GOVERNMENT ROAD" rights-of-way shall be addressed and resolved between the applicant/ owner(s) and the appropriate government agency.

#### 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 was constructed under a building permit issued to previous owner(s) by the County. It appears that the building inspections of the premises, during building construction, and throughout the life of the building permit did not disclose any encroachments into the affected yard or building irregularities. County records indicate the building permits issued by the DPW-Building Division to construct the dwelling was closed by the DPW-Building Division on February 21, 1991. The applicant and current owners are trying to resolve building encroachment problems that were disclosed after a modern survey of the existing property was performed and a map of existing conditions was prepared.

The circumstances to allow and permit the existing building and dwelling encroachments to be built and remain within that affected front yard and front yard open space over 11 years ago are unique.

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It appears that the commencement of building activity and the dwelling encroachments built into or within that affected front yard in 1990 were not perceptible and not physically and visually obtrusive from adjacent TMK property(s) or the rights-of-way. It appears the 11 year old + dwelling encroachments do not depreciate or detract from the character of the surrounding neighborhood and the existing and surrounding land patterns. It appears the existing encroachment(s) within the affected front yard was a builder's mistake which began in 1990 or a misinterpretation of the minimum building yards or boundary line(s) by the owners or builder. Inspection of the TMK property during the life of the building permit issued by the County and other agencies did not discover any dwelling encroachment problem or reveal and disclose any irregular building problems. Therefore, it is felt that the existing dwelling encroachments within that front yard will not detract from the character of the immediate neighborhood or other surrounding property within the subdivision.

The subject variance application was acknowledged by certified letter dated May 24, 2001. 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

The variance request is approved subject to the following conditions:

1. The applicant/owner(s), 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.

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dba BAUMEISTER CONSULTING

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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 dwelling identified on the site plan submitted with the variance application, dated September 2, 1999 and "3/16/01" to remain on the subject TMK property.
4. The applicant shall confer with the DPW-Engineering Division or appropriate government agency and remove the existing "cattle fence" and respective landscape encroachments within the "20-FT GOVERNMENT ROAD" identified on the variance application's site plan dated September 2, 1999 and "3/16/01".

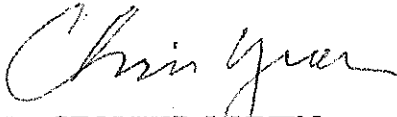
The applicant shall address and satisfy Condition 4 and shall submit proof by way of a letter or memorandum from the DPW-Engineering Division or affected government agency/landowner(s) to the Hawaii County Planning Department on or before October 31, 2001, that the respective cattle fence and the landscape encroachments within the government road have been removed.

5. The applicant shall address and satisfy Condition No. 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.
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  
Planning Dept. - Kona