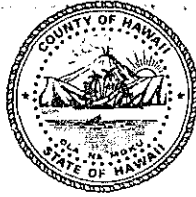


Harry Kim  
Mayor



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

December 12, 2001

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1241 WH (VAR 01-037)

Applicant: KLAUS D. CONVENTZ  
Owners: WILLIAM D. BOSWELL, ET AL.  
Request: Variance from Minimum Yards  
and Open Space Requirements,  
Pursuant to Chapter 25, Zoning

Tax Map Key: 6-4-023:100, Lot 194

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No. 1241 allows portions of a single-story dwelling to remain on the subject property "AS BUILT" with a minimum 7.97 to 9.90 feet side yard (in lieu of the required 10.00 feet) and corresponding side yard open space of 5.56 feet (in lieu of the required 5.00 feet clear space) in accordance with the applicant's site plan dated March 7, 2001. The variance is from the Minimum yards and Open space requirements, pursuant to the Zoning Code, Chapter 25, 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 spaces.

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## **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, containing 15,780 square feet is Lot 194, Puu Nani Units II and III, File Plan 968, situated at Waimea, South Kohala, Hawaii, and Tax Map Key (TMK) 3<sup>rd</sup> Division 6-4-023:100.

The subject TMK property is zoned Agricultural (A-1a) by the County and designated Agricultural "A" by the Land Use Commission (LUC). The property's 15,780 square feet land area is below the minimum 43,560 square feet lot size area required for this zoning. Therefore, Lot 194 is deemed a "non-conforming" sized property.

2. **Application.** The applicant submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee was submitted to the Kona Planning Department on March 23, 2001.
3. **Site Plan.** The applicant's site plan, drawn to scale and dated March 7, 2001, was prepared by Richard H. Cassera, LPLS denotes the metes and bounds of the subject TMK property, location of the single-family dwelling, and other site improvements.

**Note:** The applicant's site plan denotes and identifies the location of existing walls, fences, landscaping, and other site improvements located on and within the subject TMK property. The location of an existing cesspool or driveway is not clearly denoted or identified. Any wall or fences and landscaping that straddle the Lot 194's boundary line(s) or other boundary encroachment problems must be addressed and resolved by the affected parties and is not addressed by the subject variance request.

4. **Building Permit Records.** County records indicate all building permits and associated construction permits issued to the subject TMK property by the DPW-Building Division were closed.
5. **Agency Comments and Requirements:**

- a. **Real Property Tax Office.** The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated March 14, 2001 stating:

"This is to certify that William Boswell (Owner-of-record) has paid all real property taxes due the County of Hawaii up to and including 6/30/01."

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- b. **Department of Health.** The State Department of Health (DOH) memorandum dated June 19, 2001, states in part:

"The Department of Health is reserving comments for the proposed project at this time. The applicant would need to indicate where existing sewer lines and/ or individual wastewater systems are located on the site plan."

- c. **Department of Public Works.** The Department of Public Works (DPW) memorandum dated June 25, 2001, states in part:

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

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."

6. **Notice to Surrounding Property Owners.** According to the applicant's proof of mailing, the applicant mailed the first and second notice to surrounding owners on March 24, 2001 and June 19, 2001, respectively.
7. **Comments from Surrounding Property Owners or Public.** No other written agency comments or objections from the surrounding property owners or the public were received.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment 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(s). Portions of the existing were constructed into minimum yards and respective open space requirements. It appears the previous and current owner(s) were unaware of the building encroachment problem. No evidence has been found to show indifference or premeditation by the previous owner(s) to deliberately create or intentionally allow the building encroachment problems to occur.

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It appears that the existing dwelling was constructed under valid building permit(s) issued to the previous owner(s). 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.

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 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 side yard and corresponding side yard open space requirements.
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.
3. Consolidation/Resubdivision of Lot 194 with the adjacent property to address and reconfigure the affected boundary lines to comply with minimum building yards.

To require or impose removal of this encroachment and the necessary changes to 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. It appears that the consolidation/resubdivision option was never considered or addressed by the applicant.

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### **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. These purposes would not be undermined by this variance since the existing building encroachments into the affected yard(s) and respective open spaces are not physically and visually obtrusive from adjacent property(s) or the existing rights-of-way, and do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns.

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.

### **DETERMINATION**

This variance request is approved subject to the following 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. Portions of the existing dwelling and roof eaves will not meet Chapter 25, the Zoning Code's, minimum side yard and corresponding side yard open space requirements. The approval of this variance allows the existing single-family dwelling, "AS-BUILT" and identified on the applicant's site plan, dated March 7, 2001, to remain on the subject TMK property.
4. No permit to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.

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5. Future 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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Real Property Tax - Kona  
Planning Dept. - Kona