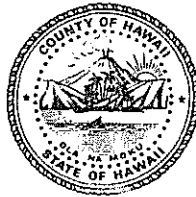


Harry Kim  
Mayor



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

February 7, 2002

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1249 WH (VAR 01-041)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** MARK ROBERSON, ET AL.  
**Request:** Variance from Minimum Yards,  
Pursuant to Chapter 25, Zoning  
**Tax Map Key: 7-6-018:011, Lot 59**

The "14 feet rear yard open space requirements" cited in the first paragraph of our variance permit letter dated January 31, 2002 is hereby changed and revised to read as follows:

"After reviewing your application, site plan, and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1249 allows portions of the existing 1-story dwelling, "AS BUILT" to remain on the subject property with a 2.8 feet rear yard, 7.0 feet side yard, and 0.5 feet rear yard open space between the existing roof eave and rear boundary line in lieu of the minimum 15 feet rear yard, 8 feet side yard, and 10 feet rear yard open space requirements, respectively, according to the variance application's site plan dated August 18, 2000. The variance request is from Lot 59's minimum yard and open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (1), (A), (B) and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively."

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Mr. Klaus D. Conventz

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February 7, 2002

We apologize for the typographical error and any inconvenience in this matter.

Sincerely,



CHRISTOPHER J. YUEN

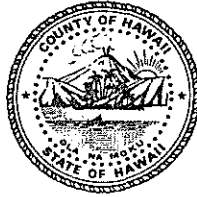
Planning Director

WRY:cps

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

Harry Kim  
Mayor



Christopher J. Yuen  
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Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

January 31, 2002

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dba Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, HI 96745

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1249 WH (VAR 01-041)**

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**Owners:** MARK ROBERSON, ET AL.  
**Request:** Variance from Minimum Yards,  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-6-018:011, Lot 59

After reviewing your application, site plan, and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1249 allows portions of the existing 1-story dwelling, "AS BUILT" to remain on the subject property with a 2.8 feet rear yard, 7.0 feet side yard, and 0.5 feet rear yard open space between the existing roof eave and rear boundary line in lieu of the minimum 15 feet rear yard, 8 feet side yard, and 14 feet rear yard open space requirements, respectively, according to the variance application's site plan dated August 18, 2000. The variance request is from Lot 59's minimum yard and open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (1), (A), (B) and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

### BACKGROUND AND FINDINGS

1. **Property Description and Location.** The subject property containing 14,643 square feet is Lot 59 of the Alii Kai Subdivision, Unit III, situated at Holualoa 1<sup>ST</sup>, North Kona, Hawaii.  
The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by Land Use Commission (LUC).

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Mr. Klaus D. Conventz

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2. **Variance Application/Applicant's Explanation-Request.** The applicant submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee.
3. **Variance Application-Site Plan.** The applicant's map or site plan drawing, drawn to scale, was surveyed and prepared by Kevin McMillen, LPLS. The site plan, dated and signed August 16, 2000 identifies the location of existing dwelling and building line indicating the limit where buildings or structures may not be built. Portions of the dwelling's living area and roof eave encroach within a side yard and rear yard.

In addition, the site plan identifies walls, concrete walk, fence posts, and other site improvements. Portions of the existing boundary walls, concrete walkways, and fence posts straddle common boundary lines or encroach into adjoining property.

These wall encroachment and other site and fence improvements less than six (6) feet in height, may not require any building permit(s). However, these existing perimeter walls (Dry Stack Rock Walls, etc.) straddling common boundary lines or site improvements constructed beyond the property's boundary lines should be addressed and resolved between the applicant and the affected parties or between legal property owner(s).

The site plan does not denote location or identify any existing cesspool(s) or Individual Wastewater System(s) (IWS).

4. **Building Permit Records.** The copy of the approved original detailed building construction plans to construct existing building, perimeter walls/fences, and other landscaping and property improvements were not submitted with the variance application. The applicant shall confer with the Department of Public Works (DPW-Kona)-Building Division and other affected agencies to address and comply with all building permits (BPs: #37620, #42054, #44560, #44693, #49874, and #02439) issued to the TMK property, and make necessary corrections to the existing building improvements to comply with DPW-Building Division requirements. The applicant or current owners shall confer with the DPW to close any outstanding building permits and comply with variance conditions and agency requirements.

5. Agency Comments and Requirements.

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated May 9, 2001 stating:

"TMK(s): (3) 7-6-18-11"

"This is to certify that Roberson, Mark J & Suzanne (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including 6/30/2001."

- b. The State Department of Health (DOH) memorandum dated May 29, 2001, states in part:

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

- c. The Department of Public Works (DPW) memorandum dated May 30, 2001, states in part:

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

1. Please refer to the attached Building Division comments dated May 25, 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 May 25, 2001 includes the following comments and statements:

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

Mr. Klaus D. Conventz

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The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear

The projections do not meet setback requirements and should be corrected.

Others: Recommend the owner obtain services of architect/structural engineer to resolve setback/projection with setback requirement.”

6. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department (Kona Office) on May 10, 2001 and May 23, 2001, respectively, by the applicant.
7. **Comments from Surrounding Property Owners or Public.** No other written agency comments or objections from surrounding property owner(s) to the variance application were received.

### **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. Portions of the dwelling encroach into a side and rear yard. According to information provided by the applicant, the severe dwelling encroachments within the property's rear yard resulted from the previous owners misunderstanding or misinterpretation of Lot 59's boundary line along the adjacent "Flood Channel". It appears the dwelling encroachments within the rear yard and minimum rear yard open space requirements were compounded with the issuance of successive building permits for additions to the original dwelling constructed in the late 1960s. It appears that successive misinterpretations of the boundary lines by past property owners during the 1970s exacerbated building encroachment issues. Furthermore, the applicant acknowledges the current owners "purchased the subject property "AS IS" through a bank sale".

Therefore, considering the background and present 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 owners 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

There are no reasonable alternatives in resolving the difficulty of the applicant or current owners. Alternatives available to the applicant or owners to address and correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments and attendant roof eaves that encroach into the affected side and rear yards.
2. Redesign and relocate the dwelling to fit within the correct building envelope prescribed by the Zoning Code and/or other design and remedial building alternatives.
3. Consolidate Lot 59 with respective adjacent lot(s) to expand the lot's size and redefine the property area and minimum building lines and minimum yard requirements.

To require or impose removal of the existing dwelling encroachments and modifying the attendant roof eave(s) within the affected yards would seem unreasonably harsh and uneconomical at this time. The removal of the dwelling encroachments or relocation of dwelling may disrupt the dwelling's structural integrity, change internal room lighting and air circulation, and severely change the building's overall building geometry and exterior building character. Pursuant to information submitted with the variance application and County Finance Department, the county does not own the "abandoned roadway" property between the subject TMK property (Lot 59) and the "Flood Channel". Thus the applicant is unable to actively pursue the consolidate/resubdivision option with the county and the possibility of acquiring additional property to address and satisfy the building setback is a remote option at this time.

The applicant, on behalf of the current owner(s), is trying address and resolve building encroachments that were built and established on the subject property prior to acquisition of the property by the current owners. No evidence has been found to show indifference or premeditation by the current applicant and owners to deliberately create or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant 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 owner(s) when a more reasonable alternative is available by the granting of the subject variance request.

Mr. Klaus D. Conventz

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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. It appears that the existing dwelling improvements were constructed under a series of building permit(s) issued to a succession of previous owner(s) of the subject TMK property. It appears that the status or record of building inspections of the premises, during building construction and throughout the life of the building permit(s) is not available. It appears that before the modern survey was performed, the current owners were not aware of the severity of the building encroachment issues or setback irregularities. It appears that the current owners were made aware of the severe encroachment problems during their deliberation to purchase the property. The current owners are trying to resolve the property's encroachment problems created by a misinterpretation of the boundary line(s) or placement of the building improvements by the previous owner(s).

It appears that existing building encroachments into the affected yards and respective open space requirements required by the Zoning Code are not physically and visually obtrusive from adjacent property or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears the existing building (dwelling) encroachment(s) within that affected side yard was a building mistake which occurred was a misinterpretation of the minimum building yards or boundary line(s) by the previous owner(s). Inspection of the property during the life of the building permit(s) issued by the County or other agencies are not available and there is no records or building citations addressing the existing building encroachment problem(s) or setback issues. Therefore, it is felt that the existing dwelling improvements/encroachments will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by certified letter dated May 17, 2001. Additional time to allow the Planning Director to understand and address agency comments was required. The applicant, on behalf of the owners agreed to an extension of time to February 8, 2002 to render a decision on the subject variance request.

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.



**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

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 denoted on the applicant's site plan dated August 16, 2001 will not meet Chapter 25, the Zoning Code's minimum side and rear yards and attendant open space requirements. The approval of this variance is limited only to the dwelling improvements constructed under building permits issued by the DPW-Building Division. The approval of this variance does not address the wall and/or landscape encroachment issues on Lot 59 or adjoining TMK property(s).
4. The applicant shall contact the DPW-Building Division to address and satisfy the any outstanding building permits issued by the DPW-Kona Office to the previous owners. The following building permits: BP Nos. #37620, #42054, #44560, #44693, #49874, and #02439, and further correction or construction permits issued to the subject TMK property shall be "finaled" or closed by the DPW-Building Division prior to the sale of the subject TMK property or change in title.  
  
No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject property, subject to provisions of the Zoning Code or State Law, which may change from time to time.
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.

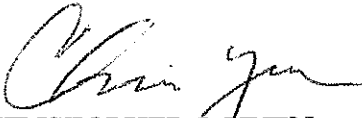
Mr. Klaus D. Conventz

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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