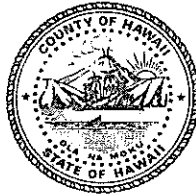


Harry Kim  
Mayor



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

August 14, 2002

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1300 WH (VAR 02-016)**  
**Applicant: KLAUS D. CONVENTZ**  
**Owner: MICHAEL R. GILLETT**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 7-8-012:087, Lot 11**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1300 allows portions of a 2-story dwelling-garage to remain, "AS BUILT", with a minimum 7.7 feet to 8.36 feet side yard in lieu of the minimum 10.0 feet side yard required, according to the variance application's site plan map dated March 12, 2002. The variance request is from the property's minimum 10 feet side yard requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B).

#### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 11 containing 13,251 square feet, is located within Keauhou 1 & 2 Beach Section, and situated at Keauhou, North Kona, Hawaii.

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

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on March 21, 2002. The applicant's site plan drawing, drawn to scale and dated March 12, 2002, denotes the dwelling-garage and roof eave location, "AS BUILT", on "LOT 11". The site plan map was certified and signed by a surveyor on March 16, 2002.

**Note:** The variance request does not address the location of fences and walls straddling common boundary lines or any other issues related to property use. Any existing perimeter walls, fences, and landscape materials straddling TMK boundary lines or any boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-016):**

- a. The State Department of Health (DOH) memorandum dated April 17, 2002, states:

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

- b. The Department of Public Works (DPW)-Building Division dated April 12, 2002, states in part:

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

The Building #005286, Electrical #EK07544 and Plumbing M005307 permits for the subject property was (sic) never finalized."

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on March 21, 2002 and April 12, 2002 by the applicant

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no 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 escrow or sale of the subject property. The applicant, on behalf of the owner, is trying to resolve building encroachment issues created after recent building improvements were completed. The variance application's site plan map was prepared by a surveyor and shows the dwelling-garage's position and other site improvements, "AS BUILT". This site plan identifies building encroachments outside the lot's building envelope into a side yard required by the Hawaii County Zoning Code. The applicant and current owner became aware of the encroachment issues after the survey map was prepared and presented during escrow. No evidence has been found to show indifference or premeditation by the current owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling and garage improvements were constructed under valid building permits and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation and resubdivision to modify property lines and adjust minimum yards.

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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)/uses and boundary/property lines.

It appears that existing building encroachments into the affected side yard are not physically and visually obtrusive from adjacent property(s) or the existing 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. Therefore, it is felt that these building encroachments within the affected side yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated April 9, 2002 and additional time to consider agency comments was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than August 31, 2002.

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.

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3. Portions of the 2-story dwelling-garage will not meet Chapter 25, the Zoning Code's minimum yard requirements. The approval of this variance allows the dwelling-garage building improvements identified on the variance application's site plan map dated March 12, 2001, to remain, "AS BUILT", on Lot 11 or the subject TMK property.
4. The current owner(s) or applicant shall confer with the DPW-Building Division and close or final Building #005286, Electrical #EK07544, and Plumbing #M005307 prior to any further change in title or sale of the subject TMK property.
5. No ohana permit to allow an ohana dwelling or building permit issued to construct 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.
6. 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 Office - Kona  
Planning Dept. - Kona