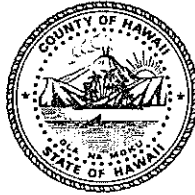


Harry Kim  
Mayor



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. 1301 WH (VAR 02-020)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** DUANE HARENS, ET AL.  
**Request:** Variance from Minimum Yards,  
Chapter 25, Zoning  
**Tax Map Key:** 7-3-028:076, Lot 6

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1301 allows portions of a dwelling to remain, "AS BUILT", with a minimum 11.4 feet to 11.5 feet side yard and corresponding minimum 9.7 feet to 9.9 feet side yard open spaces in lieu of the minimum 15 feet side yard and minimum 10 feet side yard open space requirements, according to the variance application's site plan or survey map dated and signed on March 7, 2002. The variance request is from Lot 6's minimum yards, pursuant to the Hawaii County 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, (a), (b).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 6 containing 23,193 square feet, is within Kona Coastview Subdivision, Unit VI, Increment 2, File Plan 1070, and situated at Kalaoa 3<sup>rd</sup>, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC). The subject property's size and area are "non-conforming".

023375WJ

AUG 15 2002

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 2  
August 14, 2002

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on April 8, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and certified by a surveyor on March 7, 2002. The survey map by KKM Surveys shows both dwelling positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 6", pursuant to an actual survey dated February 28, 2002.

**Note:** The variance request does not address the location of the "STONEWALL" and "BBQ" or other site improvements straddling common boundary lines or any other issues related to property use. These existing perimeter walls and site improvements straddling common boundary lines or any other boundary encroachments must be addressed and resolved by the applicant or between affected parties or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-020):**

- a. The State Department of Health (DOH) memorandum dated April 25, 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) memorandum dated April 24, 2002, states in part:

"We have reviewed the subject application and have no comments."

3. **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 April 8, 2002 and April 20, 2002 by the applicant

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 3  
August 14, 2002

4. **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 owners, is trying to resolve building encroachment issues created by previous owner(s) or builders. The variance application's site plan map was prepared by a surveyor and shows the both dwelling positions and other site improvements, "AS BUILT", on Lot 6. This site plan shows that portions of a dwelling was constructed beyond the lot's building envelope into a side yard required by the Hawaii County Zoning Code. The applicant and current owners 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 owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling 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.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 4  
August 14, 2002

### **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 and attendant side yard open space requirements 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 17, 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:

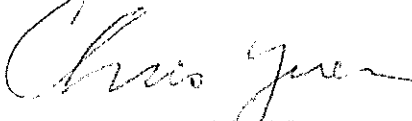
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 5  
August 14, 2002

3. Portions of a dwelling will not meet Chapter 25, the Zoning Code's minimum yard requirements. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan map dated and signed March 7, 2001, to remain, "AS BUILT", on Lot 6 or the subject TMK property.
4. 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

WRY:cps  
P:\WP60\WRY\FORMLETT\VARAPPZCTMK73028076.BC

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