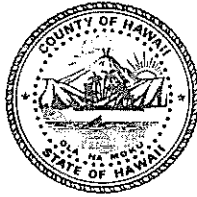


Harry Kim  
Mayor



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 30, 2002

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1306 WH (VAR 02-025)**

**Applicant: KLAUS D. CONVENTZ**  
**Owner: ARLITA SMITH FAMILY TRUST**  
**Request: Variance from Minimum Yards,  
Chapter 25, the Zoning Code**  
**Tax Map Key: 7-5-025:019, Lot 14**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1306 allows portions of a dwelling-carport-storage to remain, "AS BUILT", with a minimum 6.9 feet to 13.9 feet side yard and corresponding minimum 5.6 feet side yard open spaces in lieu of the minimum 15 feet side yard and minimum 10 feet side yard open space requirements, respectively, according to the variance application's site plan or survey map dated and signed on April 23, 2002. The variance request is from Lot 14's minimum side yard requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 5, Section 25-5-56, Minimum yards, (2), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 14 containing 22,345 square feet, is within Kona Orchard Subdivision, and situated Puapuaanui, North Kona, Hawaii.

The property is zoned Residential and Agricultural (RA-.5a) by the County and designated Rural "R" by the Land Use Commission (LUC).

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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 May 3, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and certified by a surveyor on April 23, 2002. The survey map by KKM Surveys shows both dwelling positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 14", pursuant to an actual survey dated April 17-18, 2002.

**Note:** The variance request does not address the location of the "CRM Wall", "Dry Stack Rock Walls" or other site improvements straddling common boundary lines or any other issues related to property use. Those walls or 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 02-025):**

- a. The State Department of Health (DOH) memorandum dated May 22, 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 May 31, 2002, states in part:

"Please refer to the attached Building Division comments dated April 18, 2002."

The attached DPW-Building Division memorandum dated April 18, 2002 states in part:

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

The Electrical EK03382 and EK03466 permit for the subject dwelling was never finalized."

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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 May 3, 2002 and May 22, 2002 by the applicant
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 owner, 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 dwelling position and other site improvements, "AS BUILT", on Lot 14. This site plan shows that portions of a dwelling was constructed beyond the lot's building envelope into a side yard and attendant side yard open space 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 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.

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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 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 and side yard open space will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated May 15, 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 September 6, 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:

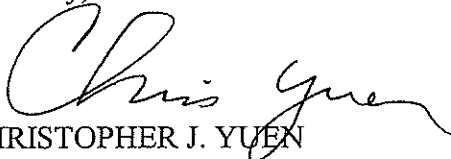
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 dwelling will not meet Chapter 25, the Zoning Code's minimum side and side yard open space 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 14 or the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division and close the following electrical permits: EK03382 and EK03466, prior to any change in title or sale of the subject TMK property.
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

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