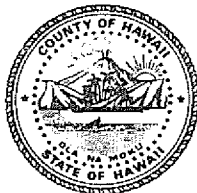


Harry Kim  
Mayor



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

September 4, 2002

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

Dear Mr. Conventz:

#### **VARIANCE PERMIT NO. 1308 WH (VAR 02-026)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** ULF J. & BERIT KAHLSTROM TRUST  
**Request:** Variance from Minimum Yards,  
Chapter 25, the Zoning Code  
**Tax Map Key:** 7-6-024:010, Lot 10

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1308 allows portions of both dwellings to remain, "AS BUILT", within the respective minimum 10 feet side yards. The variance is to allow the dwelling nearest Poinciana Place to remain with a minimum 9.0 to 9.3 feet "north" side yard and the other dwelling nearest the rear boundary line to remain with a minimum 9.7 feet to 9.99 feet "south" side yards in lieu of the respective minimum 10 feet side yards according to the variance application's site plan or "display map" dated and signed on January 24, 2001. The variance request is from Lot 10's minimum side yards, pursuant to the Hawaii County 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 10 containing 10,183 square feet, is within Kalani Makai Subdivision, Unit I, and situated at Holualoa, 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 subject property is within the Special Management Area (SMA).

025795 [Signature]

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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 "display map" drawing is drawn to scale and certified and dated by surveyor on January 24, 2001. The survey map by KKM Surveys shows both dwelling positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 10", pursuant to an actual survey dated December 21, 2000.

**Note:** The variance request does not address the cesspool location(s) or required wastewater systems, location of the chain link fence improvements, and any landscape encroachment issues. Any site improvements straddling common boundary lines or 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 02-026):**

- 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:

"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 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.

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### **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 the owner(s) or building contractor. 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 10. This site plan shows that portions of both dwelling were constructed beyond the lot's building envelope into respective side yards required by the Hawaii County Zoning Code. The applicant or 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 both 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 both dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation and resubdivision with adjoining property(s) to modify common property lines and adjust minimum yards.

### **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.

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It appears that the respective building encroachments into the respective side yards are not physically and visually obtrusive from adjacent property(s) or the existing right-of-way (Poinciana Place). It appears the building encroachments into the respective side yard 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 the building encroachments within the respective side yards 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 15, 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:

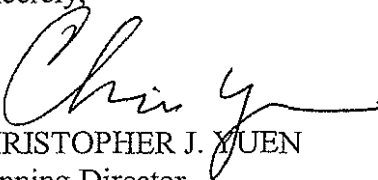
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 dwellings will not meet Chapter 25, the Zoning Code's minimum side yard requirements. The approval of this variance allows the respective dwelling improvements and encroachments identified on the variance application's site plan map dated and signed January 24, 2001, to remain, "AS BUILT", on Lot 10 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  
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xc: Real Property Tax - Kona  
Planning Dept. - Kona