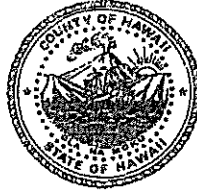


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

March 12, 2003

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE PERMIT NO. 1349 WH (VAR 02-069)**  
**Applicant: KLAUS D. CONVENTZ**  
**Owner: PHYLLIS RIVERA TRUST**  
**Request: Variance from Minimum Yards,  
Chapter 25, the Zoning Code**  
**Tax Map Key: 7-3-014:003, Lot 26**

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After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1349 allows portions of the ohana dwelling improvements, "AS BUILT", to remain with a minimum 7.9 feet side yard and 13.1 feet to 14.9 feet rear yard in lieu of the minimum 8.0 feet side and 15.0 rear yards, respectively, and allow attendant deck/stairways/eave improvements to remain with minimum 1.6 feet to 6.2 feet open spaces from the respective property lines in lieu of the attendant minimum 4.0 feet side yard open space and minimum 10.0 feet rear yard open space requirements according to a variance site plan map dated and signed September 1, 2002. The variance request is from Lot 26'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, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 26 containing approximately 7500 square feet, is within Kona Wonder View Lots Subdivision, File Plan 765, and situated at Kalaoa 2<sup>nd</sup>, North Kona, Hawaii.

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The property is zoned Agricultural (A-5a) by the County and designated Urban "U" by the Land Use Commission (LUC). The current property owner was granted an ohana permit (OD 91-292) to allow the construction of a second dwelling or ohana dwelling unit behind the original dwelling unit. The 2-story ohana dwelling unit was constructed on the property after the ohana permit was issued on or about December 2, 1991.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about September 3, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and signed September 1, 2002. The survey map by KKM SURVEYS shows dwelling positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 26", pursuant to an actual survey done on or about August 26-27, 2002.

**Note:** The variance request does not address the location of cesspool or other individual wastewater system (IWS) or site improvements straddling common boundary lines or walls straddling common property lines and the right-of-way. Any other boundary encroachments must be addressed and resolved by the applicant or between or between the current property owner(s) and the affected agency(s)/ adjoining property owner(s).

3. **Agency Comments and Requirements-WH (VAR 02-069):**

- a. The Department of Public Works (DPW) memorandum dated November 6, 2002, states in part:

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

**Building**

1. Please refer to the attached Building Division comments dated November 04, 2002.

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Roadways

2. Any encroachments within the County right-of-way should be removed.

Note: The CRM wall along the northerly front lot line extends as much as 1.2 feet into the Loloa Drive right-of-way. Also, a wire fence along the northerly front lot line extends as much as 0.9 feet into the Loloa right-of-way.”

The attached DPW-Building Division memorandum dated November 4, 2002 states in part:

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

The Building #026456 and #925020 permits for the subject dwelling has no status of inspections.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear  
Commercial structures-5 ft. side, 5 ft. rear”

- b. The State Department of Health (DOH) memorandum dated November 20, 2002, states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

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 September 6, 2002 and October 31, 2002 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or other agency objections were received. However, several telephone calls concerning the encroachment issues were received from adjoining property owners and the following letter(s) were received the building positions

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and other encroachment issues:

- a. Objection letter dated September 12, 2002 from Bruce and Josephine Goold. Copy of a letter dated November 14, 2002 addressed to Mr. and Mrs. Goold submitted for the variance file from applicant (Baumeister Consulting).
- b. Objection letter dated December 13, 2002 from Sakae Sugimoto.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment problems were recently discovered after a survey of existing property was prepared for escrow purposes. The applicant is trying to resolve building encroachment issues created by previous contractor or builders. The variance application's site plan map was prepared by a surveyor and shows the dwelling positions and other site improvements, "AS BUILT", on Lot 26. County records indicate that portions of both single-family dwellings were constructed "by others" beyond the lot's building lines or building envelope into the Lot 26's minimum yards, pursuant to the Hawaii County Zoning Code. The applicant and past or current owners became aware of the encroachment issues after the respective improvements were completed. No evidence has been found to show indifference or premeditation by the past or current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that that all 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 at that time. However, several construction permits to construct the dwelling improvements were not closed by the contractors or past owner(s) and must be addressed pursuant to variance conditions cited below.

#### **ALTERNATIVES**

Alternatives available to the applicant or property owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or redesigning or relocating the respective dwelling improvements to fit within the correct building envelope prescribed by the Zoning Code.

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2. Consolidation with portions of the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of 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.

Due to the unusual topography of Lot 26 and relationship to adjoining lots, the existing dwelling encroachments within the respective minimum yards of Lot 26 are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that specific 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 yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated October 28, 2002 and additional time to consider agency comments and neighborhood concerns was deemed 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 March 15, 2003.

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

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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 a single-family ohana dwelling located on the subject property will not meet Chapter 25, the Zoning Code's minimum yard requirements. The approval of this variance allows the single-family ohana dwelling improvements and encroachments identified on the variance application's site plan map dated and signed on September 1, 2002, to remain, "AS BUILT", on Lot 26 or the subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division-Kona to address any outstanding building permits (#026456 and #925020) and close any related electrical or mechanical construction permits issued to the subject tax map key property.
5. The applicant or current owner(s) shall confer with the DPW-Engineering Division-Kona regarding the CRM wall encroachments located within the right-of-way (Loloa Drive). The CRM wall encroachments within the right-of-way shall be removed by the current applicant/owner(s) or any requirements stipulated by the DPW-Engineering Division shall be met on or before December 31, 2003.
6. Future building improvements and permitted uses on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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

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xc: Real Property Tax - Kona  
Planning Dept. - Kona  
Bruce and Josephine Goold  
Sakae Sugimoto  
File-VAR NO. 344  
File-OD 91-292