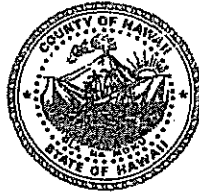


Harry Kim  
Mayor



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 5, 2003

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1348 WH (VAR 02-070)**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** DOROTHY WASHINGTON  
**Request:** Variance from Minimum Yards,  
Chapter 25, the Zoning Code  
**Tax Map Key:** 7-7-020:023, Lot 23

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1348 allows portions of a dwelling "AS BUILT", to remain on Lot 23 with a minimum 9.7 feet to 9.8 feet side yard and minimum 13.0 feet front yard open space in lieu of the minimum 10.0 feet side yard and minimum 14.0 feet front yard open space requirements, respectively, according to variance application's site plan map dated September 5, 2002. The variance request is from Lot 23's minimum yards, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 23 containing 10,000 square feet, is within the Kalani Sunset Subdivision, being a portion of Grant 1591 to Hoolawaihonua, and situated at Holualoa 3<sup>rd</sup>, 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).

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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 or about October 22, 2002. The applicant's variance application site plan or map drawing is drawn to scale and dated September 5, 2002. The map by Wes Thomas Associates denotes the building envelope and shows the "2-Story House" position, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 23", pursuant to an actual survey done on or about August 15, 2002.

**Note:** The variance request does not address the "Wooden Trellis" improvements, location of cesspool or other individual wastewater system (IWS), other site improvements straddling property lines or common boundary lines shared with adjoining lots, and retaining wall improvements within the rights-of-way. Any other boundary encroachments must be addressed and resolved by the applicant or between the current property owner(s) and adjoining property owner(s) or affected agencies.

3. **Agency Comments and Requirements-WH (VAR 02-070):**

- 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.

**Roadways**

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

Note: The CRM retaining wall at the Northwesterly corner of the property where it is up to 2.3 feet into the road right-of-way."

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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 Plumbing #MK04812 permit for the subject dwelling has no status of inspection.

Others: Wooden Trellis, is this a permitted structure? Wooden Trellis is not noted on building permit #KO5964.”

- 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 October 22, 2002 and November 1, 2002 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. However, several telephone calls and the following correspondence or letter(s) were received from the concerned property owners or neighbors (i.e. the dwelling’s past history (rental units), excessive foot and vehicle traffic within the neighborhood, and on-street parking issues):

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

It appears that the building encroachment problems were discovered during escrow or sale of the subject TMK property. The applicant, on behalf of the current owner, is trying to resolve building encroachment issues. 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 23. This site plan shows that portions of a single-family dwelling were constructed beyond the lot’s building lines or building envelope into one of Lot 23’s minimum side yards and does not meet minimum front yard open space requirements, pursuant to the Hawaii County Zoning Code. The

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applicant or current owner became aware of the dwelling 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 to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements were constructed under valid building permit(s) 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. The non-permitted "wooden trellis" improvements identified on the site plan map will be demolished and removed from the property.

#### **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. The non-permitted "wooden trellis" improvements will be removed and the retaining wall issues will be addressed with the DPW-Engineering Division (Kona).
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.

It appears that the dwelling encroachments constructed on or about 1983 within the affected side and front yard open space are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these 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 yards and minimum open yard spaces identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by letter dated October 28, 2002 and additional time to consider or address the status of the non-permitted "trellis" improvements and status of the CRM wall encroachments within the rights-of-way 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 7, 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 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 "2-Story House" or single-family 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 dwelling improvements and dwelling encroachments identified on the variance application's site plan map, "AS BUILT", to remain on Lot 23 or subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division (Kona) to address any outstanding building issues or close #MK04812 issued to the subject tax map key property. The non-permitted "wooden trellis" improvements shall be demolished and removed from the property on or before

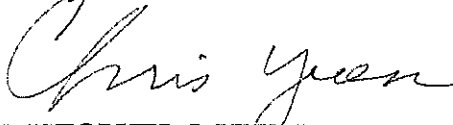
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June 1, 2003 and confirmed by the applicant.

5. The applicant shall confer with the DPW-Engineering Division (Kona) and remove portions of any perimeter retaining CRM walls extending into the affected rights-of-way identified on the variance site plan map. The retaining wall or CRM wall encroachments shall be removed on or before December 31, 2003.
6. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to Lot 23 or the subject TMK property.
7. 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.

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 Department - Kona