



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

June 9, 2003

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1364 WH (VAR 03-009)

Applicant: KLAUS D. CONVENTZ
Owners: KENNETH C. SUGAI, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code

Tax Map Key: 7-9-017:020, Lot B-1

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1364 allows portions of a dwelling improvements located on the northerly portion of the subject property (Lot B-1), "AS-BUILT", according to the variance application's site plan map dated January 24, 2003 (Revised) subject to variance and Department of Public Works (DPW) building requirements. The variance allows the dwelling located on the northerly portion of the subject TMK property to remain with a minimum 9.7 feet side yard and minimum 9.9 feet front yard open space requirements, "AS BUILT". The wooden deck improvements (constructed without a DPW-Building Permit) attached to the dwelling will be permitted with a minimum 3.0 feet side yard and attendant open yard spaces pursuant to variance and subject to DPW building requirements. The variance request is from Lot B-1'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 space requirements, (a).

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Mr. Klaus D. Conventz
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Page 2
June 9, 2003

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot B-1 consisting of 19,995 square feet, is a portion of Grant 1594 to Poka, and situated at Honoalo, North Kona, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agricultural "A" by the Land Use Commission (LUC).

Ohana Dwelling Permit (OD 90-29) letter dated February 28, 1990 granted a permit to construct a second dwelling unit on the property. It appears that building permits to construct the main dwelling and ohana dwelling unit on Lot B-1 were closed. However, no building permit or construction permits to build the open wooden deck attached to the northerly dwelling was/were issued.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about January 27, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated January 24, 2003 (Revised). The map by Wes Thomas Associates identifies and denotes the building envelope, dwelling and wooden deck improvements, roof eave positions, and other site improvements.

Note: The variance request does not address the cesspool or other individual wastewater system (IWS) location or other site improvements straddling property lines or common boundary lines shared with adjoining lots. Any other boundary encroachments, including driveway access to the property, must be addressed and resolved by the applicant or between the current property owner(s) and adjoining property owner(s) or affected agencies.

Furthermore, pursuant to a June 9, 2003 discussion with the applicant, the processing of the subject variance application does not recognize or approve any "CONDOMIUM PROJECT" or individual lot areas denoted as "UNIT 1" OR "UNIT 2", etc., on the variance site plan map dated January 24, 2003 (Revised).

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 3
June 9, 2003

3. **Agency Comments and Requirements-WH (VAR 03-009):**

- a. The State Department of Health (DOH) memorandum dated March 7, 2003, states:

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

- b. ”The Department of Public Works (DPW) memorandum dated March 17, 2003, 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 March 12, 2003.”

The attached DPW-Building Division memorandum dated March 12, 2003 states in part:

“Approval of the application shall be conditioned on the comments as noted below.”

The minimum setbacks shall be maintained as follows:

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

Others: Unit 2 dwelling Wooden Deck will remain an open deck. No roof covering/structure will be permitted for existing wooden deck.”

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 January 23, 2003 and February 26, 2003 by the applicant.

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 4
June 9, 2003

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments. The following objection letters were received from surrounding property owners (TMK) or public:
- a. Objection letter from Matsue Ikeda (TMK: 7-9-017:019) dated March 7, 2003.
 - b. Objection letter from Rodney and Debra Raymond (TMK: 7-9-017:019) dated March 12, 2003.
 - c. Fax and objection letter from Jasmine H. Henriques (TMK: 7-9-17:012) dated March 12, 2003.

Note: A Fax letter dated March 18, 2003 from the applicant (Baumeister Consulting) acknowledging the objection letters or complaints was received. The deck location, design, and "noise" issues were discussed with the applicant on June 9, 2003. The applicant to agreed to look at the "non-permitted" open wooden deck location and design and incorporate further architectural buffers or features meeting the DPW-Building Codes to mitigate the impact of activity on a "permitted" open wooden deck subject to conditions. (Refer to variance conditions).

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment issues were disclosed by a survey map dated January 24, 2003. The applicant, on behalf of the current owners, is trying to resolve building encroachment issues identified by the recent survey map. The variance application's site plan map was prepared by a surveyor and shows the dwelling position and other site improvements, "AS BUILT", on subject TMK property. The variance site plan map and approved site plan drawing in the ohana dwelling permit file (OD 90-29) indicate that portions of the original "northerly" dwelling unit were constructed beyond the lot's building lines or building envelope into respective yards and associated open space requirements pursuant to the Hawaii County Zoning Code. The applicant and current owners became aware of the dwelling encroachment issues after the 2003 survey map was prepared. It appears that the original building improvements were constructed under valid building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises prior to 1990 by the agencies during construction of the original dwelling unit improvements did not disclose any building encroachment issues or building

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 5
June 9, 2003

setback irregularities at that time. It appears that the position of "non-permitted" open wooden deck improvements attached to the original dwelling "northerly" unit after 1990. The position of the "after-the-fact" deck improvements will be allowed subject to variance and requirements of the DPW-Building Division.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the building encroachments or redesigning or relocating the dwelling(s) and attached carport(s) to fit within the correct building envelope prescribed by the Zoning Code. Any non-permitted building improvements and location of the open wooden deck attached to the "northerly" dwelling will be addressed between the applicant and the DPW-Engineering Division (Kona).
2. Consolidation with portions of the adjoining property (R-O-W, TMK: 7-9-017:019) 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 were constructed on the property prior to 1990 within the affected side yards and front yard open yard space requirements are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way and the "wooden deck" was attached and built after 1990. The applicant will secure the "after-the-fact" building permits for the open wooden deck from the DPW-Building Division. It appears that the dwelling improvements and open wood deck encroachments will not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. It is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map and associated minimum open space requirements will not detract from the character of the immediate neighborhood or the subdivision. The position, size, and design of the "non-permitted" "AS-BUILT" open wooden deck and deck design will be modified

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 6
June 9, 2003

to mitigate any impacts to the adjoining agricultural and dwelling uses.

The subject variance application was acknowledged by letter dated February 14, 2003 and additional time to consider building permit history and other DPW building code requirements was deemed necessary. The applicant, on behalf of the current owners, agreed to extend the date to no later than June 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 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 the "1-Story House" and "Wooden Deck" located on the northerly portion of the subject TMK property will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated January 24, 2003 (Revised). The approval of this variance allows these dwelling and open wooden deck encroachments to remain, "AS BUILT", subject to DPW building codes and building permit requirements.

The applicant shall confer with the DPW-Building Division (Kona) for the "After-the-Fact" DPW Building Permit(s) and other construction permits to construct the Wooden Deck. All building permits and related construction permits for the building improvement issued to the

Mr. Klaus D. Conventz
dba Baumeister Consulting
Page 7
June 9, 2003

subject TMK property shall be closed or "finaled" prior to any change in title or sale of the property.

Other non-permitted open "lean-to" building encroachments or non-permitted building structures identified or denoted on the variance site plan map dated January 24, 2003 shall be demolished and removed. A status report and revised site plan drawing showing the approved dwelling improvements and open wooden deck improvements shall be submitted on or before June 15, 2004.

5. 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
OD 90-29
Ms. Matsue Ikeda
Mr. & Mrs. Rodney Raymond
Ms. Jasmine H. Henriques