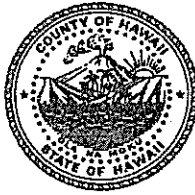


Harry Kim  
Mayor



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. 1365 WH (VAR 03-017)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** BRUCE S.F. HO, ET AL.  
**Request:** Variance from Minimum Yards,  
Chapter 25, the Zoning Code  
**Tax Map Key:** 8-2-009:067, Lot 47

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1365 allows portions of a "1-Story House" or Dwelling improvements to remain on the subject TMK property (Lot 47), "AS-BUILT", pursuant to the variance application's site plan map dated February 19, 2003. The variance allows the dwelling or portions of the dwelling with a minimum 20.1 feet to 26.6 feet front yard and 16.6 feet to 23.6 feet front yard open space yards in lieu of the minimum 30 feet front yard and attendant minimum 24 feet front yard open space requirements, respectively, according to the variance site plan map dated February 19, 2003. The variance request is from the subject property's minimum yards, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), 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 47 containing 43,566 square feet, is located within McCoy Plantation Subdivision, Increment 1, Part A, being portions of R.P. 6463, L.C. Aw. 7046 to Kaolelo and Grant 1184 to Keoni, and situated at Kalamaumi, South Kona, Hawaii.

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

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about March 5, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated February 19, 2003. The map by WES THOMAS ASSOCIATES identifies and denotes the building envelope, "1-Story House" position, and other site improvements on "LOT 47".

**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 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 03-015):**

- a. The County of Hawaii Fire Department memorandum dated May 6, 2003, states:

"We have no comments to offer at this time regarding the above-referenced variance application."

- b. Department of Public Works (DPW): No comments were received.

**Note:** County permit records show an electrical permit issued to the TMK on or about June 3, 1983 is open and should be "closed". (Refer to variance conditions).

- c. State Department of Health (DOH): No comments were received.

**Note:** Pursuant to a June 6, 2003 staff discussion with the DOH (Hilo Office): "No Comment".

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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 February 24, 2003 and April 3, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections from surrounding property owners or public were received.

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

The applicant, on behalf of the current owners, is trying to resolve building position 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 47". The applicant and current owners became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original building improvements were constructed 10 + years ago under valid building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises in 1992 or 1993 by the agencies during construction of the building improvements did not disclose any building encroachment issues or building setback irregularities at that time.

#### **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 and proposed improvements to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Coffee Drive-Right-of-Way) and resubdivision of the resultant lot to modify the "Right-of-Way", boundary lines, and adjustment of 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.

The dwelling encroachment issues were constructed on or about 1992-93 within the affected yards and not physically noticeable or visually obtrusive from the right-of-way or surrounding property. It is felt that the 10 + year old dwelling encroachment issues identified by the recent site plan map dated February 19, 2003 will not be obtrusive or detract from the character of the surrounding neighborhood and surrounding land pattern. Therefore, it is felt that the dwelling identified by the recent 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 March 24, 2003 and additional time to consider building permit history and other agency concerns 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.

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3. Portions of a dwelling (1-Story House) and attendant roof eaves will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated and signed February 19, 2003. The approval of this variance allows the dwelling encroachments to remain on "LOT 47" identified on the variance application's site plan map.
4. 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 58 or the subject TMK property.
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