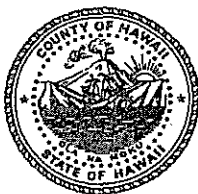


Harry Kim  
Mayor



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

September 15, 2003

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

Dear Mr. Conventz:

#### **VARIANCE PERMIT NO. 1387 WH (VAR 03-035)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** JAMES H. DODSON IV, ET AL.  
**Request:** Variance from Minimum Yards,  
Chapter 25, the Zoning Code  
**Tax Map Key:** 7-3-046:051, Lot 9, Unit 2

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1387 allows a dwelling ("2 Story House") located on the "easterly side" of the subject property (Lot 9) to remain, "AS-BUILT", with a minimum 29.18 feet front yard in lieu of the minimum 30.0 feet front yard required, and attendant minimum 23.25 feet front yard open space in lieu of the minimum 24.0 feet front yard open space required, according to the variance site plan map dated and signed on April 29, 2003. The variance request is from the subject TMK property's (Lot 9) minimum yards pursuant to the Hawaii County Code, Chapter 25, Zoning, 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 (PELEKAANA CONDOMINIUM, Unit 2), Lot 9 containing a 24,259 square feet, is within Kona Acres, Increment A, File Plan 1347 and 1348, and situated at Kalaoa 5<sup>th</sup>, North Kona, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" 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 May 16, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated April 29, 2003. The variance application's site plan or survey map by Don Mc Intosh Consulting identifies and denotes the building envelope, dwelling (2-Story House) and other site improvements on "LOT 9".

**Note:** The variance request and subject application will not address any encroachment issues located within an area designated "Unit 1" on the subject TMK property (Lot 9). The site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for any dwelling improvements located on "LOT 9". The "Placed Rockwall" along a common boundary line between Lot 9-Unit 2 and Lot 55 appears to be located entirely upon "LOT 55".

3. **Agency Comments and Requirements-WH (VAR 03-035):**
  - a. The Department of Public Works (DPW) memorandum dated June 19, 2003, states in part:

"We have reviewed the subject application and have no comments or objections to the application."
  - b. The State Department of Health (DOH) memorandum dated June 23, 2003, states:

"The Heath 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 May 7, 2003 and June 16, 2003 by the applicant.

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated April 29, 2003. The applicant, on behalf of the owner, filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling, water tank, and other site improvements, "AS BUILT", within an area designated "Unit 2" of "LOT 9". Portions of a 2-story dwelling and water tank were constructed beyond the denoted building lines or building envelope into Lot 9's minimum yards pursuant to the Hawaii County Zoning Code. The current owner 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 past owner(s)/builders or current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 9 were constructed approximately 13 years ago according to County building permit(s) records. It appears that building inspections of the premises in 1990 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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 8) and privately owned R-O-W and resubdivision of the resultant lot to modify property 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.

It appears that the dwelling encroachments constructed on or about 1990 within the front and affected side yards are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. Therefore, it is felt that these building encroachments within the affected minimum 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 June 12, 2003. Additional time to verify and consider access to dwelling improvements on Lot 9 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 August 29, 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,

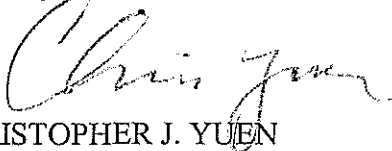
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employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of a "2-Story House" located on "LOT 9" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated April 29, 2003. The approval of this variance allows those dwelling improvements including roof eaves within "LOT 9" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 9".
4. Legal access to Lot 9 shall be addressed by the applicant/current owner prior to any change in ownership or transfer of title of the 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