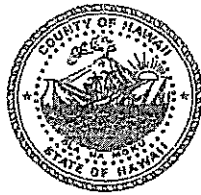


Harry Kim  
Mayor



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

April 23, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1427 WH (VAR 03-054)**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** CHRISTIAN SCOTT BERG, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning

**Tax Map Key:** 7-3-046:111, Lot 69

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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. 1427 allows portions of a dwelling (Single Story Residence) on subject TMK property (Lot 69), to remain, AS-BUILT", with a minimum 15.08 feet to 16.94 feet side yard and minimum 11.87 feet to 13.91 feet side yard open space, respectively, in lieu of the minimum 20.0 feet side yard and attendant 14.0 feet side yard open space requirements, respectively, according to the variance site plan or survey map dated and signed on August 25, 2003. The variance request is from the subject TMK's minimum side yard and attendant side yard open space requirements 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, Lot 69 containing 43,562 square feet, is located within Kona Acres Subdivision, Unit II, Increment A, File Plan 1348, and situated at Kalaoa 5<sup>th</sup>, North Kona, Hawaii.  
The property is zoned Agricultural (A-5a) by the County and designated Urban

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"U" by the Land Use Commission (LUC). The property's land area is below the minimum 5-acre lot size area required for the A-5a zone designation and is therefore deemed "non-conforming".

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about September 4, 2003. The variance application site plan map drawing is drawn to scale and dated and signed on August 25, 2003 by Thomas G. Pattison, RPLS. The site plan map denotes the location of the dwelling and dwelling encroachments into the minimum 20 feet side yard and attendant minimum 14 feet side yard open space requirements, "AS BUILT", on Lot 69.

County records show a 792 square feet addition to the original dwelling constructed on or about 1978 was approved and constructed circa 1985. However, the variance site map and applicant's background or attachment- "SPECIAL AND UNUSUAL CIRCUMSTANCES" and variance site plan map purport that the approved addition is a detached "SINGLE STORY RESIDENCE" or "(second dwelling)". County records indicate only one (1) dwelling unit was originally permitted in the 1970s on subject TMK property and a building permit was approved circa 1985, subject to an agreement, permitting "a 672 square foot addition to an existing single family dwelling with a separate exterior access from an enclosed patio". The applicant's variance site plan map denoting the "addition" as a "SINGLE STORY RESIDENCE" and applicant's reference to the 1985 building improvements and encroachments as "The subject dwelling" or "(second dwelling)" are incorrect. Corrections to the variance site plan map will be required and removal of any kitchen improvements within the "addition" or detached building improvements will be required pursuant to a recent telephone conversation between the applicant and staff. (Refer to variance conditions).

**Note:** The wastewater system(s) is/are not located or identified on the site plan map. The variance request does not address the location of rockwalls straddling common boundary lines or any other issues related to property use. Any existing perimeter walls and/or landscape materials straddling TMK boundary lines or other boundary encroachments must be addressed and resolved by applicant or between the affected parties or between legal property owner(s).

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3. **Agency Comments and Requirements-WH (VAR 03-054):**

- a. The State Department of Health (DOH) memorandum dated October 3, 2003 states:

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

- b. The Department of Public Works (DPW) memorandum dated October 9, 2003, states in part:

"We reviewed the subject application and our comments are as follows:

**BUILDING**

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division at 327-3530."

The DPW-Building Division memorandum dated September 29, 2003 states in part:

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

"The Electrical #EK06347 permit for the subject dwelling has no status of inspections. Electric permit must be finalized."

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 first and second notices were mailed on September 4, 2003 and September 18, 2003 by the applicant

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

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment problems were constructed circa 1985. The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT" on "LOT 69". This site plan identifies the original dwelling position and building encroachments within the property's minimum side yard and attendant open side space requirements pursuant to the Hawaii County Zoning Code. The applicant and current owners became aware of building encroachment issues after the survey map was prepared or during escrow. It appears that the original dwelling and other dwelling improvements were constructed under valid building permit(s) and construction permits issued by the County. It appears that the building inspections of the premises during construction of the dwelling and throughout the life of other building permit(s) issued to the premises did not disclose any building encroachment issues or building setback irregularities.

### **ALTERNATIVES**

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

1. Remove the building encroachments or redesigning or relocating the building improvements to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 69 with adjoining lot (Lot 68) and resubdivision of the resultant lot to modify property lines and adjust 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.

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It appears that the building encroachments into the minimum side yard are not physically and visually obtrusive from adjacent property (Lot 68) or the right-of-way (Kukuna Street) fronting the property. It appears the 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 the existing dwelling encroachments within the side yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated September 12, 2003 and additional time to review agency comments and status and record of the dwelling permits issued to the TMK property was 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 April 30, 2004.

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. The applicant's variance site plan map denoting the "addition" a "SINGLE STORY RESIDENCE" and applicant's reference to the 1985 building improvements and encroachments as "The subject dwelling" or "(second dwelling)" in the variance background are incorrect and were originally

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constructed as a "dwelling addition" pursuant to information on BP No. 06569 and BP No. 06897, respectively. As such, portions of a "dwelling addition" will not meet Chapter 25, the Zoning Code's minimum side yard and open space requirements. The approval of this variance allows the portions of a permitted "dwelling addition" or building encroachments identified on the variance application's site plan map that was signed and dated August 25, 2003, to remain, "AS BUILT", on the subject TMK property (Lot 69).

Any unpermitted kitchen improvements within the "dwelling addition" shall be removed. The applicant shall confer with the DPW-Building Division to address the status of the unpermitted kitchen improvements and Electrical #EK06347 prior to change in title or sale of the property.

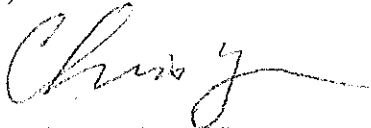
The applicant shall submit a progress report and/or documentation to confirm that unpermitted kitchen improvements with the "dwelling addition" and building encroachments were removed and close or "final" Electrical #EK06347 prior to any further change in title or sale of the property or before December 31, 2004.

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 the subject TMK property (Lot 69), subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses shall be 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

WRY:pak  
P:\WP60\WRY\FORMLETT\VARAPPZCTMK73046111.BC

xc: Real Property Tax Office - Kona  
Planning Dept. - Kona