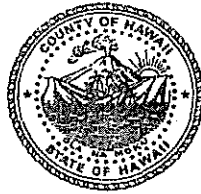


Harry Kim  
Mayor



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 8, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1422 WH (VAR 03-056)**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** SUSIE KIM  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-2-008:010, Lot 30

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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. 1422 allows portions of a duplex dwelling ("2-Story House") on Lot 30 to remain, AS-BUILT", with a minimum 14.3 feet to 15.8 feet front yard and attendant minimum 10.9 to 13.0 feet to front yard open space, in lieu of the minimum 20.0 feet front yard and attendant 14.0 feet front yard open space requirements, respectively, according to the variance site plan dated September 22, 2003. The variance request is from the subject TMK's minimum front yard and attendant front yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, 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).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 30 containing 15,102 square feet, is located within Kona Ocean View Properties (File Plan 637), being a portion of Grant 3786 to Mrs. Kaaikaula, and situated at Puukala, 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".

Pursuant to OD 89-576-File and letter dated December 8, 1989, a permit allowing a dwelling unit within the ground floor of an existing 2-story dwelling (Duplex Conversion) was issued. As such the "2-Story House" denoted on the revised site plan map is a "Duplex" or double family dwelling unit containing two (2) dwelling units. Furthermore, the required off-street parking area for the duplex shall be maintained in accordance with a previous Planning Department inspection of the property according to a Planning Department letter dated March 30, 1994 in OD 89-576-File.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about October 9, 2003. The variance application site plan map drawing is drawn to scale and dated "REVISED: OCTOBER 17, 2003" by Wes Thomas Associates. This revised site plan map denotes the location of the building encroachments into the minimum 20 feet front yard, "AS-BUILT". In addition, the dwelling improvements, "AS BUILT" do not meet the attendant minimum 14 feet front yard open space requirements.

**Note:** The dwelling's wastewater system is not located or identified on the site plan map. The variance request does not address the location of stonewalls 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).

3. **Agency Comments and Requirements-WH (VAR 03-056):**
  - a. The Department of Public Works (DPW) memorandum dated October 30, 2003, states in part:

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

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### BUILDING

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

The attached DPW memorandum dated October 28, 2003 states in part:

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

"Others: The building permit No. 006245 and the electrical permit E935300 are never finalized."(sic)

- b. The State Department of Health (DOH) memorandum dated November 13, 2003 states:

"Wastewater Branch is unable to comments (sic) to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of all existing wastewater."

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 October 9, 2003 and October 24, 2003 by the applicant.
5. Comments from Surrounding Property Owners or Public. No further written agency comments were received. The following objections from surrounding property owners were received:
  - a. Objection letter from Alicia A. Starsong received on November 14, 2003.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were constructed between 1980 and early 1990s. The applicant, on behalf of the current owner, is trying to resolve the building encroachment issues. The variance application's revised site plan map was prepared by a

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surveyor and denotes the location of the dwelling improvements or "2-Story House", accessory building ("1-Story Building"), and other site improvements, "AS BUILT" on "LOT 30". The site plan identifies the dwelling or building encroachments within the property's minimum front yard and attendant front yard open side space requirements pursuant to the Hawaii County Zoning Code. The accessory building position within the rear yard of the property was permitted before April 6, 1999. The applicant or current owner became aware of building encroachment issues after the survey map was prepared or during escrow. No evidence has been found to show indifference or premeditation by the current owner(s) to deliberately create or intentionally allow the building encroachment problems within the front yard to occur. It appears that the building 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 building construction and throughout the life of the building permit(s) 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 dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property (Lot 30) with adjoining lot (R-O-W) and resubdivision 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.

It appears that the building encroachments into the minimum front yard are not physically and visually obtrusive from adjoining property(s) or existing roadway. It appears that 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 rear yard 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 17, 2003 and additional time to consider agency comments 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. Portions of the dwelling will not meet Chapter 25, the Zoning Code's minimum front yard and attendant front yard open space requirements. The approval of this variance allows the dwelling ("2-STORY HOUSE") encroachments identified on the variance application's revised site plan map dated October 17, 2003, to remain, "AS BUILT", on the subject TMK property (LOT 30).
4. The applicant shall contact the DPW-Building Division in Kona and close or "final" outstanding building permit-BP No. 006245 and electrical building permit-E935300 prior to any change in title or sale of the subject TMK property.

Pursuant to OD 89-576, the minimum off-street parking area and/or parking spaces for the duplex building or "2-Story House" shall be maintained on the

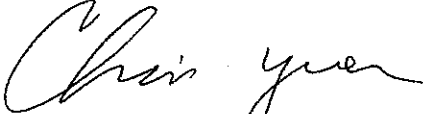
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subject TMK property in accordance with Ohana Dwelling Permit dated December 8, 1993 and Planning Department letter dated March 30, 1994.

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.

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. VUEN  
Planning Director

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xc: Real Property Tax Office-Kona  
Planning Dept.- Kona  
OD 89-576-File