

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3061  
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June 1, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1446 WH (VAR 03-059)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** JOSEPH H. PEDEFERRI  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-3-012:034, Lot A-74

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1446 permits portions of the carport with a minimum 13.9 feet to 15.0 feet front yard and dwelling (stairs-landing) with minimum 4.3 feet to 8.0 feet side yards, to remain on Lot A-74, "AS-BUILT", according to the variance site plan map dated September 8, 2003. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot A-74 containing 8677 square feet, is located within Kona Highlands, Section A, File Plan 688, being a portion of Grant 3027 to Heuheu, and situated at Kalaoa 1<sup>st</sup> and 2<sup>nd</sup>, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Urban "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".

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about September 10, 2003. The variance application site plan map drawing is drawn to scale and dated "REVISED: September 8, 2003" by Wes Thomas Associates. This revised site plan map denotes the location of the building encroachments into minimum 8 feet side yard, "AS-BUILT".

**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 03-059):**

- a. The Department of Public Works (DPW) memorandum dated October 20, 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 dated October 16, 2003)."

**ROADWAYS**

1. The Applicant shall remove any encroachments or obstructions within the County right-of-way."

The DPW-Building Division memorandum dated October 16, 2003 states in part:

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“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-5 ft. side, 5 ft. rear”

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

“The Health 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 first and second notices were mailed on September 11, 2003 and October 16, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections to the variance application were received from surrounding property owners or public.

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

It appears that the building encroachment problems were constructed between 1979 and 1997. 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 surveyor and denotes the location of the dwelling improvements or “2-Story House”, and other site improvements, “AS BUILT” on “LOT A-74”. The site plan identifies the dwelling or building encroachments within one of the property's 2-side yard(s) pursuant to the Hawaii County Zoning Code. The portion of accessory or “open” carport building position within the front yard is permitted. 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 side yard to occur. It appears that the building improvements were constructed under

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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 A-74) with adjoining lot (A-75) 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 affected side 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.

The subject variance application was acknowledged by letter dated October 9, 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 June 15, 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

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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 September 8, 2003, to remain, "AS BUILT", on the subject TMK property (LOT A-74).
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 (LOT A-74) property, 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

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