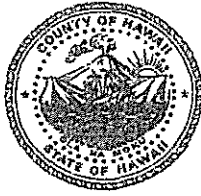


Harry Kim
Mayor



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

August 16, 2004

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

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1461 WH (VAR 04-008)

Applicant: KLAUS D. CONVENTZ
Owners: BRINKLEY FAMILY TRUST
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-035:005, Lot 2 (PUD 25)

The "minimum 4.0 feet side yard open space" cited in the first paragraph of variance permit letter dated July 2, 2004 is hereby changed and revised to read as follows:

"After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1461 allows portions of a dwelling/garage constructed on subject TMK property or lot within PUD 25. The variance permits "2-STORY HOUSE", "GARAGE", a 6.0 feet Circular Steel Staircase, to remain, "AS-BUILT", with minimum 4.7 feet to minimum 7.1 feet side yard and minimum 3.0 feet side yard open space, respectively, according to variance site plan map dated December 15, 2003. The variance request is from the minimum yards or subject TMK property's minimum yard(s) and open space requirements established pursuant to PUD 25 and Hawaii County Code, Chapter 25, Zoning, Article 6, Optional Development Regulations, Division 1, Planned Unit Development (P.U.D.)."

Hawai'i County is an equal opportunity provider and employer.

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Mr. Klaus D. Conventz
dba Baumeister Consulting
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We apologize for the typographical error and any inconvenience in this matter.

Sincerely,

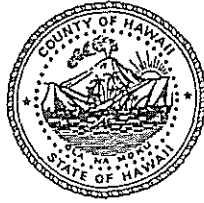


CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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cc: Real Property Tax Office-Kona
Planning Dept.-Kona
PUD 25
CZM Division-Hilo Office

Harry Kim
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PLANNING DEPARTMENT

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July 2, 2004

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

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VARIANCE PERMIT NO.1461WH (VAR 04-008)

Applicant: KLAUS D. CONVENTZ
Owners: BRINKLEY FAMILY TRUST
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 7-5-035:005, Lot 2 (PUD)

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1461 allows portions of a dwelling/garage constructed on subject TMK property or lot within PUD 25. The variance permits "2-STORY HOUSE", "GARAGE", a 6.0 feet Circular Steel Staircase, to remain, "AS-BUILT" with minimum 4.7 feet to minimum 7.1 feet side yard and minimum 4.0 feet side yard open space, respectively, according to variance site plan map dated December 15, 2003. The variance request is from the minimum yards or subject TMK property's minimum yards(s) and open space requirements established pursuant to PUD 25 and Hawaii County Code, Chapter 25, Zoning, Article 6, Optional Development Regulations, Division 1, Planned Unit Development (P.U.D.).

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dba Baumeister Consulting
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BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 8 containing 7536 square feet +/- (PUD 25), is located within a consolidation of Land Court Application 1822 (Map 1), Land Court Application 1793 (Map 2), and Royal Patent 4348, Land Commission Award 9177, Apana 2 to Kauila, and situated at Puapuaa 2nd, North Kona, Hawaii.

The property is zoned Multiple-Family Residential (RM-1.5) by the County and designated Urban "U" by the Land Use Commission (LUC). The subject TMK property was created and developed pursuant to Planned Unit Development (PUD 25). The subject TMK property (Lot 2) is within approved PUD-21-lot Alii Point Subdivision. According to PUD 25, residential buildings are allowed with a (0) Front yard and minimum 7.5 feet side yards.

The TMK property is within and subject to Special Management Area (SMA) regulations/rules and requirements. As such, in addition to minimum yards required by the PUD, the position of the "In-ground Pool" together with any retaining wall or landscaping improvements, "AS-BUILT", are subject to SMA setback rules and requirements.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about December 29, 2003. The applicant's variance application site plan map drawing is drawn to scale. This site plan map denotes the location of the building encroachments within the minimum (PUD) yards, "AS-BUILT".

The applicant's background states in part:

"The dwelling received Building Permit Nos. 885499 for the dwelling on June 6, 1988 and 885516 for the swimming pool on June 9, 1988, both under predecessor's contractors. In 1990, a deck addition was completed by the current owner under Building Permit No. 905621, issued April 25, 1990.

Undersigned determined that the footprint of the dwelling could not have been

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placed correctly outside the setbacks under no circumstances. Even if the downstairs staking error by the general contractor along the Southerly boundary would have been avoided, the second story's projection into the Southerly setback was unavoidable. The problem was that at the time, the designers misread in numerous cases the Zoning Ordinance, and confused projections and setbacks completely."

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 or SMA issues. The "AS-BUILT" position of the "In-ground pool" and retaining wall along the swimming pool will be addressed and resolved by applicant and/or current property owner(s). Refer to variance conditions.

3. **Agency Comments and Requirements-WH (VAR 04-008):**

- a. The Department of Public Works (DPW) memorandum dated March 15, 2004, 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)."

The attached DPW memorandum dated March 11, 2004 states in part:

"We oppose the approval of the application for the reasons noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

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dba Baumeister Consulting
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Commercial structures-5 ft. side, 5 ft. rear

“Others: The building permit No. 885516 is not finale (sic).”

- b. The State Department of Health (DOH) memorandum dated March 17, 2004 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 January 15, 2004 and March 20, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners and/or public were received:

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the dwelling and garage encroachment problems were discovered after a survey property was completed. The applicant, on behalf of the current owners, is trying to resolve the building encroachment and permit issues. The variance application’s site plan and denotes the location of the 2-story dwelling-circular steel staircase, garage, and other site improvements, “AS BUILT” on subject TMK property. The site plan identifies the garage encroachments, circular steel staircase encroachments, and other encroachment issues within the property’s minimum yards pursuant PUD 25. No evidence has been found to show indifference or premeditation by the past or current owner(s) to deliberately create or intentionally allow the building encroachment problems within the minimum yards to occur. The original dwelling improvements were constructed under building permit(s) and construction permits issued by the County, circa 1988. It appears that the inspections of the dwelling, garage, swimming pool, and other building improvements during construction or throughout the life of the building permit(s) issued to the TMK property did not disclose any building encroachment issues or building permit irregularities. The current owners are honestly trying to address the garage and dwelling and other building position issues constructed nearly 15 years ago.

Mr. Klaus D. Conventz
dba Baumeister Consulting
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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 garage and dwelling-stairway to fit within the correct building envelope prescribed by the PUD and other provisions of the Zoning Code.
2. Consolidation of the subject TMK property with privately owned right-of-way/adjoining property 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 detached garage and dwelling improvements are not physically and visually obtrusive from adjoining property(s) or detectable within the privately owned roadway. The garage encroachment within the road right-of-way must be resolved between the current owners and owner(s) of the right-of-way. It appears that the 15 + year old garage and dwelling-stairway encroachments within the minimum side yards do not depreciate or detract from the character of the surrounding neighborhood and the surrounding land pattern. Therefore, it is felt that the garage and dwelling-stairway encroachments issues within the affected yards will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 23, 2004 and additional time to consider agency comments and research other files 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 July 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
Mr. Klaus D. Conventz

dba Baumeister Consulting

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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/owners, 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 "Garage", "2-Story House", and "6.0' (Diameter) Circular Steel Staircase" on "LOT 8" or 7536 square feet TMK property (Lot 2) will not meet the minimum yards allowed pursuant to PUD 25. The approval of this variance allows the garage, dwelling, and circular steel stairway encroachments identified on the variance application's site plan map to remain, "AS BUILT", on subject TMK property.

The applicant or current owners shall contact the owner(s) of the privately owned road right-of-way to resolve the garage encroachment within the privately owned right-of-way prior to any change in title or sale of the subject TMK property.

4. The applicant or current owners shall confer with the Planning Department-CZM Division before August 31, 2004 to resolve the "AS-BUILT" swimming pool and CRM or retaining wall position situated along shoreline setback line or within the shoreline setback area of the TMK property. Subsequent to determination by the CZM Division and/or further CZM requirements stipulated by the Planning Department, the applicant or current owner shall close of "final" any outstanding building permits or construction permits issued to subject TMK property prior to any change in title or sale of subject TMK property.

Mr. Klaus D. Conventz

dba Baumeister Consulting

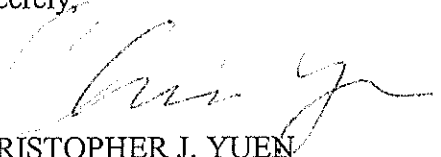
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5. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property (LOT 8), subject to provisions of the Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction, PUD 25, SMA requirements, 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

WRY:cd

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cc: Real Property Tax Office-Kona
Planning Dept.-Kona
PUD 25
CZM Division-Hilo Office