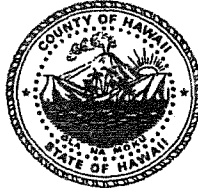


Harry Kim  
Mayor



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

June 10, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1454 WH (VAR 04-015)**

**Applicant: KLAUS D. CONVENTZ**

**Owners: MONTY A. HART, ET AL.**

**Request: Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning**

**Tax Map Key: 7-3-046:108, Lot 66**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1454 allows portions of a dwelling ("Garage"/"Single Story House") to remain, "AS-BUILT", on subject TMK property or Lot 66, with a minimum 28.33 feet front yard and minimum 16.39 feet side yard and attendant minimum 13.39 feet side yard open space, in lieu of minimum 30.0 feet front yard, and minimum 20.0 feet side yard and attendant minimum 14.0 feet side yard open space requirements, respectively, according to the variance application site plan map dated and signed on October 23, 2003. The variance request is from the subject TMK property's minimum front yard, minimum side yard and attendant minimum 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 66 consisting of 43,608 square feet, is within Kona Acres Subdivision, Unit 2, Increment "A", and situated at Kalaoa 5<sup>th</sup>, North Kona, Hawaii.

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The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about January 21, 2004. The variance application site plan map was prepared by Don Mc Intosh Consulting and is dated and signed on October 23, 2003. The survey map, drawn to scale, denotes the dwelling ("Garage/Single Story House") position and dwelling encroachments, "AS-BUILT", into the property's minimum 30 feet front yard and affected minimum 20 feet side yard.

The applicant's background states in part:

"Owners purchased the property by Deed dated December 27, 1977, recorded in the Bureau of Conveyances of the State of Hawaii on January 6, 1978, in Book 12654 Page 304.

The dwelling received under predecessor Building Permit No. 771154 issued May 25, 1977.

Owners were unaware of any problems until a survey conducted by Don McIntosh on October 23, 2003, revealed the encroachments."

**Note:** The variance request does not address the cesspool location, or rockwalls/fence/landscaping improvements located on the property, and any other boundary issues along or straddling common boundary lines shared with the adjoining property(s).

3. **Agency Comments and Requirements-WH (VAR 04-015):**

- 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:

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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 copy of the DPW memorandum dated March 11, 2004, states in part:

"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 January 30, 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 21, 2004 and March 3, 2004, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or public were received.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, is trying to resolve the dwelling/garage encroachment issues discovered after recent survey and map of the property was completed. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling/garage and other site improvements, "AS BUILT" on "LOT 66". The site plan identifies

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the dwelling/garage's building position and the building encroachment issues within the front and affected side yards pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of building encroachment issues after a recent survey map was prepared. No evidence has been found to show indifference or premeditation by contractors, builders, or current owners to deliberately create or intentionally allow the dwelling/garage encroachment to be built. It appears that the 27 + year old dwelling/garage was constructed pursuant to a building permit and other construction permits issued by the County; in the late 1970's. Inspection by the agencies during construction of the dwelling/garage did not disclose any building encroachment issues or building setback issues or building irregularities.

### **ALTERNATIVES**

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

1. Remove the dwelling/garage encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 66 with adjoining Lot 65/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 dwelling/garage encroachments into the minimum side yard are not physically and visually obtrusive from an adjoining property (Lot 66) or rights-of-way. It appears the 27 + year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the existing dwelling encroachments within a side yard 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 February 23, 2004 and additional time to consider agency comments was necessary. The applicant agreed to extend the

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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 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 a dwelling/garage on the subject TMK property or Lot 66 will not meet Chapter 25, the Zoning Code's minimum side yard requirement. The approval of this variance allows dwelling/garage encroachments identified on the variance application's site plan map dated and signed on October 23, 2003, to remain, "AS BUILT", on the subject TMK property (Lot 66).
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 66), subject to provisions of the Hawaii County 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