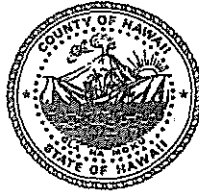


Harry Kim  
Mayor



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

November 9, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1491 WH (VAR 04-019)**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** KATHARINA FRIEDERICH  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 8-2-008:069, Lot 2

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1491 permits portions of a proposed (1-story) dwelling to be constructed on the subject TMK property, Lot 2, with a minimum 15.0 feet side yards in lieu of the minimum 20.0 feet side yards required according to the variance application site plan map and other information submitted with the variance application. The variance request is from subject TMK's minimum side yard 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 2 consisting of 1.18 acres, is situated at Kahauloa 1<sup>st</sup> and 2<sup>nd</sup>, South 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 February 4, 2004. The variance application site plan map drawing is drawn to scale and denotes the location of the dwelling improvements and access easement.

For the record, the owner was cited by the Kona Planning Department for violation of State law and construction of improvements (2-structures) without County Permit(s). (Refer to copy of Planning Department's letter dated January 12, 2004 in variance file).

The applicant's variance letter or background states in part:

"Subject parcel is an approximate 810 ft. long (West to East) lot, which is at the extreme West boundary (makai) approximately 100 ft. wide, and ends at the top (mauka) in point, a perfectly triangular lot.

Considering now the required 20.0 ft. setbacks on all three (3) sides, the permissible building area under the Zoning Code would be reduced to just about 50%.

In addition, the lot is very steep in the lower mid-section, with an elevation change bottom to top of approximately 100 ft.. Even more difficult is the bottom part (the largest land area), which is very low and cut off unfortunately from any ocean breeze due to the land in front (West), and adjoining development and neighbor structures.

This area does not offer any view, and is closest located to an "AE" flood area (channel), for which a map by the Engineering Division is also enclosed.

The only reasonable building site is actually just at the 50.0 ft. width line (midsection of the property). The grade is close to level and manageable, without costly terracing and retaining walls, which would be required in the lower section of the land.

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The location, approximately 50.0 ft. above the lowpoint (West) would provide the owner not only with a beautiful view to enjoy, but an elevated breezy site with sufficient airflow and light, the purpose and intent of the setback regulations.

However, a 50.0 ft. width would result in a 10.0 ft. wide house, impossible to use for any design even the smallest living quarters.

Undersigned hereby submits that, although the lot size of 1.18 acres is considerable, the utility of the lot, due to shape and topography, as well as close proximity to the flood channel, is very limited. At best, even the less desirable lower part of the lot in its footprint has no more utility and buildable area than the average RS-15 or RA-.5 zonings provide. And this is the better part of the land as far as area is concerned (reasonable dimensions both ways)."

In addition to the above, the applicant forwarded a letter dated February 13, 2004 containing additional site information and formulas utilized by the applicant to calculate the property's "pole" area, available "building area" after deducting the "flagpole" area and minimum yard requirement ("12,600 sq. ft."), and comparisons with other Zoning designations.

**Note:** The dwelling's proposed cesspool or wastewater system was not identified or located on the variance site plan map. The variance request does not address the location of any stone walls along the property's boundary and/or landscape materials near or straddling common boundary lines.

3. **Agency Comments and Requirements-WH (VAR 04-019):**

- a. The Department of Public Works (DPW) memorandum dated March 10, 2004, states in part:

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

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

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2. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
3. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
4. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
5. Driveways shall conform to County standards details R-37 and R-38. All sight distances shall meet the requirements of the Hawaii Statewide Uniform Design Manual and the AASHTO Standards.”

In addition the DPW-Building Division memorandum dated March 8, 2004 memorandum states in part:

“Approval of the application shall be conditioned on the comments as 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

Commercial structures-5 ft. side, 5 ft. rear”

- 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 February 4, 2004 and March 3, 2004 by the applicant.

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letters and/or comments to the variance application were received:
- a. Objection letter dated February 5, 2004 from Michael A. Federspiel.
  - b. Objection letter dated March 11, 2004 from Jan Buchanan and Marc Vandenplas.

The applicant requested and reviewed copy(s) of the objection letters. The applicant requested a site inspection by Planning Department staff to verify the property's topography and other unusual conditions within the property. On April 16, 2004 PD staff inspected the subject property with the applicant and adjoining property with the applicant and adjoining property owner(s)-Vandenplas, Et al. Subsequent to the April 16, 2004 site inspection the applicant forwarded letters dated April 20, 2004 and June 29, 2004, respectively.

In addition to information cited in the applicant's letter dated April 20, 2004 and request for extension of time to render a decision, the applicant requested staff and Planning Director to consider the unusual circumstances, i.e. the property's shape, "lay of the land", concerns cited by adjoining property owners, etc. Subsequent to the April 20, 2004 letter, forwarded a written reply dated June 29, 2004, which states in part:

"As per your request, I confirm that my client accepts the condition to limit the 1-story single-family dwelling to a maximum building height of 18' (feet) above existing base grade reflected in the variance application plan.

I received also your information by neighbor Marc Vandenplas, that the neighbor's building pad grade is at 566 ft. above sea level. Assuming this information to be correct, the subject property's base grade should then read no higher than 541' above sea level.

In other words, the permissible building height of 18 feet will result in a total ridge height approx. 6-7 feet below the neighbor's current grade level.

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Ms. Friederich is aware that this limitation applies only to the specific location and base grade subject to this variance application, while at levels below subject base grade, where any additional structure is subject to a 35 ft. building heights (sic), as long as the required 20.00 ft. setbacks on both sides can be maintained.”

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owner, is requesting a variance to permit portions of the proposed dwelling to be allowed with a minimum 15 feet side yard in lieu of the minimum 20 feet side yard requirement. The variance application’s site plan map was prepared by the applicant.

The April 2004 staff inspection confirmed that the long “flagpole” access driveway detracts from the property’s building area, lot geometry beyond the “flagpole” and slope of this area limit building options, and adjoining landscaping hedges and native or “wild” landscaping situated on adjoining property(s) and along common boundary lines near the lower or “makai” building area restrict air circulation and views of the ocean. Portions of the proposed dwelling or existing improvements within the 20 feet side yard and attendant open yard space are not highly visible or detectable from the nearest public right-of-way (Napoopoo Road) and surrounding neighborhood. Pursuant to the applicant’s letter dated June 29, 2004, the applicant proposes to limit the overall height or apex of the non-permitted building improvements to address concerns and objections cited by adjoining property owner(s).

### **ALTERNATIVES**

Alternatives available to the applicant include the following:

1. Construct proposed dwelling the building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining property and resubdivision to modify property lines and adjust minimum yards.

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### **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.

The Planning Director acknowledges the objections and concerns cited by surrounding property owners contacted. However, access and shape of the lot are unusual, topography or "lay of the land" is severe, air circulation or natural ventilation within the lower area of the property is restricted by tall hedges located on adjoining property, and the unusual lot shape or lot geometry limits building options. Access from the public roadway is via a series of access easement(s) upon adjoining property(s) to the driveway within the "flagpole". The proposed dwelling's position or applicant's request to specify a minimum 15 feet side yard for proposed dwelling improvements will not depreciate or detract from the character of the surrounding neighborhood or surrounding land pattern. Therefore, in view of the unusual lot geometry, topography, etc., it is felt that the proposed dwelling's position and request for a 15 feet minimum side yard for the proposed dwelling improvements will not detract from the character of the immediate neighborhood or the subdivision. The proposed dwelling's maximum building height will be limited pursuant to the applicant's request and subject to variance conditions.

The subject variance application was acknowledged by letter dated February 24, 2004 and additional time to consider agency comments, inspect the property, and allow the applicant to address and respond to objections and comments received from surrounding property owners was necessary. The applicant agreed to extend the date to complete the variance background report and render a decision on the subject variance to no later than October 31, 2004.

Based on the foregoing findings and site inspection of the property, 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.

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### **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 proposed "House" or dwelling will not meet Chapter 25, the Zoning Code's minimum side yard and attendant front yard open space requirements. The approval of this variance permits proposed building position identified on the variance application's site plan map to be constructed on the subject TMK property. The proposed "HOUSE" is permitted with minimum 15 feet side yard(s) and attendant 10 feet side yard open space. The proposed "House" or dwelling's maximum building height denoted on the approved variance site plan map shall be limited to twenty (20) feet height limit. Other future buildings and uses shall comply with the minimum Zoning Code requirements.
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, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses on the property 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  
Michael A. Federspiel  
Marc Vandenplas, Et al.