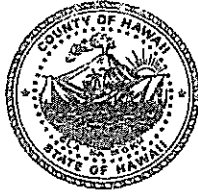


Harry Kim  
Mayor



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 18, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1471 WH (VAR 04-055)**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: RICKY J. SPILKER, ET AL.**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 9-4-023:030, Lot 765**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1471 allows portions of dwelling or "HOUSE", to remain on subject property, "AS-BUILT", with minimum 4.32 feet side yard and attendant minimum 3.0 feet side yard open spaces in lieu of the minimum 10.0 side yard and attendant minimum 5.0 feet side yard open yard requirements, respectively, pursuant to the applicant's variance site plan map submittal dated April 14, 2004. 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), 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 765 containing 13,827 square feet, is within Discovery Harbor Subdivision, Unit I, and situated at Puumakaa-Waiomao, Kau, Hawaii. The TMK property's street address is 94-1713 Wakea Avenue.

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

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about May 19, 2004. The applicant's variance application site plan map drawing, drawn to scale, was prepared by The Independent Hawaii Surveyors. This site plan map denotes the location of the building ("HOUSE") encroachments within affected minimum 10 side yard and attendant minimum 5 feet side yard open space requirements, "AS-BUILT".

The applicant's background states in part:

"The dwelling received under predecessor Building Permit No. 925543, issued April 9, 1992.

Owners were unaware of any problems until a survey, conducted by Niels Christensen on April 14, 2004, revealed the encroachments.

It appears from the site inspection by undersigned that the previous owner's contractor committed an honest staking error, when the corner stake between lots 756 and 757 along the westerly boundary of lot 765 was inadvertently used for the placement of subject dwelling's footprint, after the actual corner stake (Southwest) had been covered by bulldozer. This is also why the land had been cleared across the boundary with lot 766. Mr. Christensen confirmed this assumption to current owner."

The encroachments are limited to the extreme southerly house corner and roof overhang. However, undersigned advised owners to remove the overhang in order to secure at least the 3.0 feet open space under Section 504 (a), related Table No. 5-A, more particular Section 1711 of the Uniform Building Code, related to fire-rating and/or open spaces without fire-rating requirements respectively. See County Code Chapter 5. Based hereon owners request approval of a 3.0 feet open space in lieu of the required 5.0 feet for the prevailing zoning."

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**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 "ROCK WALL" near or along the corner property's front boundary line 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 04-055):**

- a. The Department of Public Works (DPW) memorandum dated June 24, 2004, states in part:

"We have reviewed the subject application forwarded by your memo dated June 10, 2004 and oppose the approval of the application for the reasons noted below:

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.

Roof projections-see Section 504(b). Projections beyond the exterior wall shall not extend beyond; along with Section 1711."

- b. The State Department of Health (DOH) memorandum dated July 6, 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 May 18, 2004 and June 22, 2004 by the applicant.

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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 building encroachment issues were recently discovered during the sale of the property. The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues. The variance application's site plan denotes the location of the dwelling improvements and other site improvements, "AS BUILT" on "LOT 765". The site plan identifies the dwelling encroachments within the property's affected minimum side yards pursuant to the Hawaii County Zoning Code. It appears that the dwelling 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) issued to previous owner(s) did not disclose any building encroachment issues or building permit irregularities. The current owners are honestly trying to address the status of the dwelling position located on the TMK property.

Pursuant to the applicant's background portions of the dwelling's "ROOF" will be removed to comply with County Building Code and DPW requirements (Refer to Variance Conditions).

### **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 with adjoining lots (Lot 766) 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.

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It appears that the dwelling's encroachments into the affected side yard are not physically and visually obtrusive from adjoining property(s) or rights-of-way. It appears that the building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Portions of the roof or eave will be removed to comply with the DPW requirements. As such, after portions of the roof are removed, the remaining dwelling and roof encroachments within the affected side yard on LOT 765 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 10, 2004 and additional time to consider agency comments and applicant's request 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 August 31, 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/owner, 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 "HOUSE" or dwelling improvements on "LOT 765" will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum side yard open space requirements, "AS BUILT". The approval of this variance allows the building encroachments to remain, "AS BUILT", pursuant to the variance site plan map dated April 14, 2004 and the following requirement:

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dba Baumeister Consulting  
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The applicant or current owners shall remove portions of the roof encroachments in accordance with the requirements of the DPW. The applicant or current owners shall submit a written report, photographs, or the like, showing the remaining roof encroachments comply with the minimum 3.0 feet side yard clear space requirement stipulated by the DPW. The written report must be submitted to the subject variance file on or before October 31, 2004.

4. Any building permits or construction permits issued to subject TMK property shall be "finalized" or closed prior to any change in title or sale of the subject TMK property.
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, 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 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,

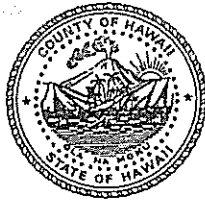


CHRISTOPHER J. YUEN  
Planning Director

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

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

October 20, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1471 WH (VAR 04-055)**  
**Letter-Report: September 20, 2004/Submittals**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: RICKY J. SPILKER, ET AL.**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 9-4-023:030, Lot 765**

Your transmittal letter dated September 20, 2004 and attachments were incorporated into subject permit file.

In view of your letter-report and submittals, Variance Permit No. 1471, Condition, No. 3, dated August 18, 2004, is amended to read as follows:

- “3. Portions of the “HOUSE” or dwelling improvements on “LOT 765” will not meet Chapter 25, the Zoning Code’s minimum side yard and attendant minimum side yard open space requirements, “AS BUILT”. The approval of this variance allows the building encroachments to remain, “AS BUILT”, pursuant to the variance site plan map dated April 14, 2004, and, applicant’s letter-report dated September 20, 2004. According to the letter-report dated September 20, 2004 and DPW building requirements, a minimum 3.0 feet side yard clear space shall be maintained between the edge of the affected roof eave and side boundary line.”

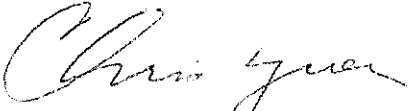
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Mr. Klaus D. Conventz  
dba Baumeister Consulting  
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October 20, 2004

Thank you for your attention and timely reply.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cd

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cc: Real Property Tax Office-Kona  
Planning Dept.-Kona File