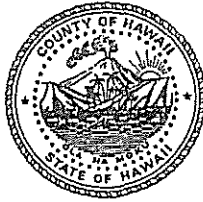


Harry Kim  
Mayor



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. 1481 WH (VAR 04-067)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** STEVEN E. STEVENS, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-8-018:013, Lot 13

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1481 allows portions of a dwelling constructed in 1968 to remain on subject property, "AS-BUILT", with minimum 7.36 feet front yard and attendant minimum 2.81 feet front yard open space in lieu of the minimum 20 feet front yard and attendant minimum 14 feet front yard open yard space, pursuant to the applicant's variance site plan map dated and signed on July 12, 2004. The variance request is from the TMK property's minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2) (A).

## **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 13 containing 1.14 acres, is within “Kuakini House Lots” of Bishop Estate Map No. 5435-A, portion of Land Court Award No. 7713, Royal Patent No. 656, Apana 6, and Land Court Award 7713, Royal Patent No. 4475, Apana 7 to V. Kamamalu, portion of Kahaluu, and situated at North Kona, Hawaii. The TMK property’s street address is 78-6942 Walua Road.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about August 3, 2004. The variance application site plan map drawing is drawn to scale and was certified or signed on July 12, 2004 by Pattison Land Surveying, Inc.. The site plan map denotes the location of the dwelling encroachments, “AS-BUILT” into the minimum yards and attendant open yard or clear space requirements.

The applicant’s background states in part:

“The residence was built under Building Permit No. 39036, issued June 28, 1968 to predecessor in the property.

The owners were unaware of any problems until a survey conducted by Pattison Land Surveying Inc. on July 12, 2004, revealed the setback violation, pending current escrow procedure for conveyance.”

3. **Agency Comments and Requirements-WH (VAR 04-067):**
  - a. The Department of Public Works (DPW) memorandum dated August 24, 2004, states in part:

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

**BUILDING**

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 3  
October 20, 2004

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 August 19, 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 September 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 August 2, 2004 and August 23, 2004, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public**. No further written agency comments or comments from surrounding property owners or public sion or TMK were received:

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

It appears that the building encroachment problems were discovered nearly 36 years after the dwelling was completed. The applicant, on behalf of the current owners, is trying to resolve the 36 + year old building encroachment issues. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT" on "LOT 13".

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 4  
October 20, 2004

The site plan identifies the dwelling's building position together with other building issues within the property's minimum yards and attendant open yard requirements pursuant to the Hawaii County Zoning Code. The applicant and/or current owners recently became aware of building encroachment issues and no evidence has been found to show indifference or premeditation by contractors and/or builder (Circa 1968) to deliberately create or intentionally allow the dwelling encroachment to be built. The dwelling was constructed under a valid building permit issued together with other construction permits issued by the County on or about June 28, 1968. It appears that no building encroachment issues or building setback irregularities were noted by the DPW-Building Division or other agencies.

#### **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 Lot 13 with adjoining lot(s)/right-of-way 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 encroachments into the minimum yards are not physically and visually obtrusive from adjacent property(s) or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood or surrounding land patterns. Therefore, it is felt that the existing dwelling encroachments within the yards identified on the variance application site plan map will not detract from the character of the immediate neighborhood or the subdivision.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 5  
October 20, 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 on subject TMK property or Lot 13 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows the dwelling encroachments identified on the variance application's site plan map that was certified on or about July 12, 2004 to remain, "AS BUILT", on the subject TMK property (Lot 13).
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 6  
October 20, 2004

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  
P:\WP60\WRY\FORMLETT\VARAPPZCTMK78018013.BC

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