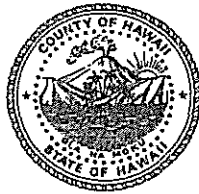


Harry Kim  
Mayor



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 10, 2004

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1489 WH (VAR 04-071)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** TERRANCE E. MCVAY, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 8-7-015:009, Lot 9

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1489 allows portions of a dwelling (2-Story House) to remain on Lot 9, "AS-BUILT", with a minimum 13.9 feet rear yard and attendant minimum 7.9 open rear yard space, in lieu of the minimum 15.0 feet rear yard and minimum 10.0 feet rear yard open space requirements, according to the variance site plan map dated July 29, 2004. The variance request is from the subject TMK's minimum rear yard and attendant rear yard open space requirements pursuant to 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 containing 7500 square feet, is located within Kona Paradise Subdivision, being a portion of R.P. 7739, Mahele Aw. 25 to Nahua, and situated at Kaohe 4<sup>th</sup>, South Kona, Hawaii. The TMK property's street address is 87-3200 Boki Road.

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The property is zoned Agricultural (A-5a) 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 August 9, 2004. The applicant's variance application site plan map drawing, drawn to scale, was prepared by Wes Thomas Associates. The variance site plan map, dated August 2, 2004-Revised, denotes the location of the building encroachments ("2-Story House"), "AS-BUILT", within the TMK property's minimum rear yard and minimum rear yard open space requirements.

The applicant's background states in part:

"The violations are limited to the narrow easterly building extension, which reaches 1.1 ft. into the rear yard setback (or 13.2 inches), for a total of slightly over 5 sq. ft. The staircase is less than 6.0 feet high (56 inches), and projects 2.9 ft. more into the open space than permissible. However, where the stairs exceeds the permissible projection the height is only 32 inches; in other words very miniscule."

**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 any "Retaining Stonewall" near or along common boundary lines 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 04-071):**

- 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:

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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 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”

Others: The plumbing permit No. M885297 is never (sic) finalized.”

- b. The State Department of Health (DOH) memorandum dated September 9, 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 9, 2004 and August 23, 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 building encroachment issues were revealed by the survey map and during escrow or 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 34”.

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The site plan identifies the dwelling encroachments within the property's minimum 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 subject TMK property 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.

### **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 32) 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's encroachments within the property's minimum rear 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. Therefore, it is felt that the existing building encroachments within the minimum yards on LOT 34 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 16, 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 November 15, 2004.

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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 "2-Story House" or dwelling improvements on "LOT 34" will not meet Chapter 25, the Zoning Code's minimum rear yard and attendant minimum rear yard open space requirements, "AS BUILT". The approval of this variance allows the building encroachments to remain, "AS BUILT", pursuant to the revised variance site plan map dated August 2, 2004.
4. The outstanding plumbing permit No. M885297 issued to subject TMK property shall be "finaled" or closed by the applicant or current owner(s) prior to future sale of the 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.

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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

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