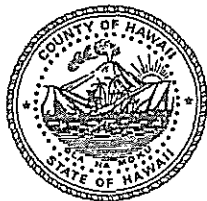


Harry Kim  
Mayor



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 2, 2005

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 1516 WH (VAR 05-029)**  
**Applicant: KLAUS D. CONVENTZ**  
**Owner: ERIC GOERTZ, ET AL.**  
**Request: Variance from Minimum Yards,**  
**Pursuant to Chapter 25, the Zoning Code**  
**Tax Map Key: 7-7-020:080, 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. 1516 allows the building encroachment or portions of the 1-story dwelling to remain, "AS-BUILT", with a minimum 5.86 feet to minimum 7.97 feet from the "southerly" side yard, in lieu of the minimum 10.0 feet side yard required, according to the variance site plan map dated March 11, 2005. The variance is from the TMK property's minimum side yard, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B).

### **BACKGROUND AND FINDINGS**

1. **Location**. The subject property, Lot 9 containing 10,004 square feet, is within Kainana Subdivision, being a portion of Grant No. 988 to Kamalo and Grant 1591 to Hoolawaihomua, and situated at Holualoa 3<sup>rd</sup>, North Kona, Hawaii. The property's street address is 77-6422 Kilohana Street.

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Mr. Klaus D. Conventz  
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Page 2  
June 2, 2005

The property is zoned Single-Family Residential (RS-10) by the County and designated "Urban" by the State Land Use (SLU) Commission.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about March 13, 2003. The applicant's variance application site plan or map drawing is drawn to scale and was dated and signed on March 11, 2005. The variance application's site plan or survey map by Pattison Land Surveying, Inc. denotes the building envelope, dwelling ("SINGLE STORY HOUSE") and other building positions/site improvements on "LOT NO. 9".

**Note:** The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for any dwelling improvements located on "LOT NO. 9". The location of any perimeter wall improvements within "Kilohana Street" right-of-way (Public Right-of-Way) or adjoining property(s) shall be addressed and resolved by the applicant/current owner(s).

3. **Agency Comments and Requirements-WH (VAR 05-029):**
  - a. The State Department of Health (DOH) memorandum dated April 27, 2005, states:

"The Heath 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 the first and second notice was mailed on March 15, 2005 and April 4, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

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

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated and signed on March 11, 2005.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 3  
June 2, 2005

The applicant, on behalf of the owner, filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", upon "LOT NO. 9". A small portion of a dwelling's footprint or living area is constructed beyond the denoted building set-back line or building envelope into one of Lot No. 9's minimum (south) side yard pursuant to the Hawaii County Zoning Code. The current owner(s) or applicant became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling improvements on Lot No. 9 were recently constructed between 2002 and 2003 according to County building permit records. It appears that building inspections of the premises by the respective agencies during the construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. The location of any "wall" improvements straddling common boundary lines or within the public right-of-way shall be resolved by the applicant/current owner (Refer to Variance Permit Conditions).

### **ALTERNATIVES**

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

1. Removing the existing building encroachments or redesigning or relocating the dwelling and steps to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot No. 8) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within 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 small portions of the dwelling within the affected side yard are not physically noticeable or visually obtrusive from adjacent property-Lot No. 8 or the right-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 4  
June 2, 2005

Therefore, it is felt that these building encroachments within the affected minimum yards 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 March 22, 2005. Additional time to consider agency comments was deemed 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 May 31, 2005.

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 "SINGLE STORY RESIDENCE" on "LOT NO. 9" will not meet Chapter 25, the Zoning Code's minimum side yard requirements according to the variance application's site plan map dated and signed on March 11, 2005. The approval of this variance allows the dwelling improvements on "LOT NO. 9" pursuant to the variance application's site plan map to remain, AS BUILT, on the subject TMK property or "LOT NO. 9".

Any CRM walls straddling common boundary line(s) pursuant to the variance site plan map dated March 11, 2005 shall be addressed between the applicant/current owner(s) prior to any change in ownership or sale of the property.

Mr. Klaus D. Conventz  
dba Baumeister Consulting

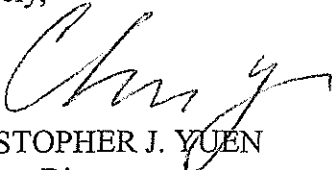
Page 5

June 2, 2005

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 (LOT NO. 9), 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 subject tax map key property are 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: jle/cd

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xc: Real Property Tax - Kona  
Planning Department - Kona