

Harry Kim  
Mayor



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Director

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Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

December 30, 2005

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

Dear Mr. Conventz:

#### **VARIANCE PERMIT NO. 05-096**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** KATHRYN E. SANDBERG TRUST  
**Request:** Variance from Minimum Yards,  
Pursuant to Chapter 25, the Zoning Code  
**Tax Map Key:** 7-8-004:079, Lot 3-A

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of Variance Permit No. 04-096 subject to conditions. The variance permits portions of a 1-story building (accessory building), "AS BUILT", to remain on Lot 3-A with a minimum 9.6 feet side yard and attendant minimum 9.3 feet side yard open space, in lieu of a minimum 15.0 feet side yard and attendant minimum 10.0 feet side yard opens space, according to variance site plan map dated June 21, 2004. The variance is from the TMK property's minimum yard and attendant open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, (2), 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 3-A containing 38,142 square feet of Keauhou 1-Keauhou 2 House Lots, being portions of R.P. 4475, L.C. Aw. 7713, Ap. 7 to V. Kamamalu, is situated at Keauhou 1, North Kona, Hawaii. The TMK property's street address is 78-6901 Mamalahoa Highway.

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The property is zoned Rural-Agricultural (RA-.5a) by the County and designated Rural ("R") 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 October 20, 2005. The applicant's variance application site plan or map drawing is drawn to scale and dated June 21, 2004 (Revised October 10, 2005). The variance application's site plan or survey map by WES THOMAS ASSOCIATES denotes the building envelope, dwelling "1-Story House", "1-Story Building (Wooden)", and other site improvements on "LOT 3-A".

**Note:** The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for the dwelling improvements located on "LOT 3-A". This variance does not address the CRM retaining wall or fence positions denoted on the variance site plan map.

The applicant's attachment dated October 19, 2005 states in part:

"The encroachments are visually not perceptible from neighbor lots or public view."

The pool house with trellis roof extension is less than 10.0 ft. in height, and is beautifully designed in harmony with the inground-infinity-pool, connecting concrete deck, and safety fencing on the grounds, also blending into the lush Ohia forest background of the neighborhood."

3. **Agency Comments and Requirements-WH (VAR 05-096):**

- a. The State Department of Health (DOH) memorandum, dated November 21, 2005, states:

"The submittals for the subject development have been transmitted to our Environmental Management programs for their coordinated review and comments. Upon receipt of their reply, their comments will be forwarded to your office."

- b. The Department of Public Works (DPW) memorandum, dated November 9, 2005, states in part:

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

Buildings shall conform to all requirements of code and statutes pertaining to building construction.”

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 October 29, 2004 and December 20, 2004, 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 (pool building) encroachment problems were identified pursuant to a survey map or variance site plan map dated June 21, 2004 (Revised: October 10, 2005). The applicant, on behalf of the owner, filed the variance 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 3-A”. A small portion of a “1-Story Building (Wooden)” near the swimming pool is within one of the property’s minimum side yard pursuant to the Hawaii County Zoning Code. It appears that the applicant and/or current owner became aware of the building encroachment issues after the survey map was prepared for escrow purposes. No evidence has been found to show indifference or premeditation by the previous or current owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling and other building improvements on “LOT 3-A” were built between 1978 and 1985 according to applicant or available County building permit records. It appears that building inspections of the premises by the respective agencies during the construction of the original dwelling and other building improvement on “LOT 3-A” did not disclose any building encroachment issues or building setback irregularities at that time.

#### **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 accessory building to fit within the correct building envelope prescribed by the Zoning Code.

2. Consolidation with portions of the adjoining property (Lot 4) 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.

According to the recent survey map, small portions of a 1-story accessory building near the swimming pool were built within a side yard. It appears that these 20 + year old encroachments within the affected yards are not physically noticeable or visually obtrusive from the adjacent property-Lot 4 or Mamalahoa Highway. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern.

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 October 27, 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.

-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:

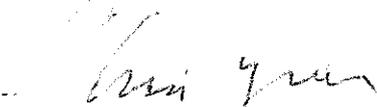
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 the building improvements or "1-Story Building (Wooden)" will not meet Chapter 25, the Zoning Code's minimum side yard requirements according to the variance application's site plan map dated June 21, 2004 (Revised: October 10, 2005). The approval of this variance allows these accessory building improvements, pursuant to the variance application's site plan map, to remain, "AS-BUILT", on the subject TMK property or "LOT 98".
4. 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

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xc: Real Property Tax Office-Kona