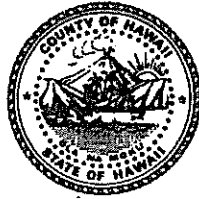


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

April 10, 2008

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

Dear Mr. Conventz:

**VARIANCE-VAR 08-005**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** PHILIP W. WELCH, JR., ET AL.  
**Request:** Variance from Chapter 25, Zoning,  
Minimum Yards  
**Tax Map Key:** 7-3-024:041, Lot 6-A

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-005 subject to variance conditions. The variance allows portions of a 1-story "Dwelling" or part of a duplex (OD 91-3) building to remain "AS-BUILT" upon Lot 6-A, and portions of attached "Porte-Cochere" and "Gazebo" to remain, "AS-BUILT" upon Lot 6-A, with minimum 29.5 feet front yard in lieu of minimum 30.0 feet front yard and minimum 21.9 feet front yard open space in lieu of minimum 24.0 feet front yard open space from the referenced TMK property's front boundary line shared with Kaloko Drive according to survey map signed and dated January 21, 2008. The variance is from the referenced TMK property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Section 25-4-44, Permitted projections into yards and open space requirements, (a).

**BACKGROUND AND FINDINGS**

1. **Location.** The referenced TMK property, Lot 6-A containing 3.000 acres, Kaloko Hills Subdivision, is situated at Kaloko, North Kona, Hawaii. The referenced TMK property's street address is 73-4671 Kahualani Road.

APR 11 2008

The property is zoned Agricultural (A-3a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on January 28, 2008. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated January 21, 2008, denotes portions of a "Dwelling" and triangular shaped "Gazebo" near or adjacent the "Porte Cochere" were built into the property's minimum 30 feet front yard (Kaloko Drive) of "LOT 6-A" or subject TMK property.

The applicant's background report dated January 27, 2008 states in part:

"The main house was built under Building Permit No. 916024, issued August 23, 1991. This permit included also the Ohana Unit. Building Permit No. 945102 for the oceanside deck was issued February 08, 1994, the Building Permit No (sic) 0151682 for the Porte Cochere was issued February 05, 1991.

Owners were unaware of any violation until a survey conducted by KKM Surveys, revealed on January 21, 2008 the encroachments.

1. Inside the front yard setback along Kahualani Road the aluminum greenhouse will be removed. (Northwest corner of property).
2. The single post and eaves of the gazebo at the Southeast side of the porte cochere projects with its triangular tip 8.1 feet into the front yard setback Kaloko Drive; thusly violating the open space by 2.1 feet, however, limited to a miniscule area at the very roof tip only. The gazebo was built at the same time the porte cochere was built.

The porte cochere itself was approved with zero setback, however, encroaches by 4.2 feet into the Kaloko Drive right-of-way. Undersigned advised owner to remove the encroachment, and the owner agrees to cut the eaves back clear of the boundary line.

3. Undersigned has included the minor encroachment into the northerly front yard setback (along Kaloko Drive) of the house's extreme northwesterly corner, which is 0.5 feet or 6 inches, to avoid a second action under County Ordinance 02 70 County, Amendment to Chapter 25, related to **"DE MINIMIS STRUCTURE POSITION DISCREPANCY"** under Section 2.(c) for agricultural zoned property and 0.75 feet limit."

**Note:** The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of CRM Walls and landscaping, etc. along or straddling the subject property's boundary lines.

**Site Inspection:** The dwelling, porte cochere/gazebo(s), and other building improvements constructed upon the subject TMK property and subject TMK property's topography and relationship to the neighborhood and abutting TMK properties were inspected and/or considered by the applicant and Planning Department staff on or about January 18, 2008 prior to submittal of the variance application by the applicant.

3. **County Building Records:**

The Hawaii County Real Property Tax Office building permit records show 3-Building Permits (916024, 945102, 015168), 3-Electrical Permits (E935718, E015438), and Mechanical (M925006, M935666) or 2-Plumbing Permit were issued by the DPW to subject TMK property. It appears that the dwelling/ohana dwelling, deck/porte cochere constructed on the "makai" side of the dwelling, and other building improvements upon "LOT 9-A" were built pursuant to building and associated construction permits issued between 1991 and 2001.

4 **Agency Comments and Requirements-VAR 08-005:**

- a. The Department of Public Works (DPW) memorandum dated February 14, 2008 states in part:

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 4  
April 10, 2008

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

The applicant shall remove any encroachments or obstructions within the County right-of-way."

- b. The State Department of Health (DOH) memorandum dated February 15, 2008 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and affidavits regarding mailing notices to the Planning Department. According to the affidavits, the first and second notices were sent or mailed by US Mail to surrounding property owners on January 28, 2008 and February 15, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 13, 2008.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

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

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling and triangular shaped gazebo encroachments within the property's minimum 30 feet front yard along Kaloko Drive. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling including attached porte cochere/deck/gazebo(s) and other site improvements, "AS BUILT", on "LOT 6-A". The current owners became aware of building permit and encroachment issues after the survey map of the property was completed. No evidence has been found to show indifference or premeditation by the current owners or builders to deliberately create or intentionally allow a portion of the dwelling or triangular shaped gazebo to be built within the property's front yard and attendant front yard open yard space along Kaloko Drive.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 5  
April 10, 2008

It appears that the original dwelling improvements and subsequent permitted building additions were constructed according to building permits and other associated construction permits issued by the DPW to subject TMK property. During construction of the dwelling/ohana unit in 1991 and porte cochere addition in 2001, the dwelling encroachment and status of the triangular shaped gazebo constructed in 2001 and disclosed by the recent survey map within the property's front yard along Kaloko Drive went unnoticed by the builders and agencies circa 1991 and 2001.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the building encroachments identified on the variance site plan map include the following actions:

1. Remove the portions of the dwelling including the triangular shaped gazebo to fit within the correct building envelopes prescribed for dwelling and porte cochere pursuant to the Zoning Code.
2. Consolidation of Lot 6-A with adjoining Kaloko Drive right-of-way and resubdivision to modify property lines or 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.

The portion of the permitted dwelling and triangular shaped gazebo adjacent the porte cochere within the property's front yard along Kaloko Drive was inspected by the applicant and Planning Department staff prior to submission of the variance application. Given the property's unusual geometry and severe topography, the small corner of the dwelling and gazebo improvements constructed into the property's front yard along Kaloko Drive are not physically and/or visually detectable or obtrusive from both rights-of-way fronting the subject TMK property (Kaloko Drive and Kahualani Road) and from 2-lots ("6-B" and "6-C") abutting the subject TMK property. Pursuant to the applicant's March 5, 2008 letter and attached copy of March 3, 2008 survey report, the portion of the porte cochere encroaching into the Kaloko Drive right-of-way and greenhouse identified on the variance site plan map were removed. In view of the foregoing and variance background information/photographs, it is felt that the corner of the dwelling constructed

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 6  
April 10, 2008

circa 1991 and gazebo "built at the same time the porte cochere was built" and completed circa 2001 within the property's affected front yard along Kaloko Drive does not detract from the character of the immediate neighborhood or subdivision.

The variance application was acknowledged by letter dated February 4, 2008 and additional time to review building permit history and consider agency comments was necessary. The applicant agreed to an extension of time to complete the variance background report and render a decision on the variance application on or before April 11, 2008.

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 application and VAR 08-005 is approved subject to the following variance 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. A portion of the "Dwelling" and triangular shaped "Gazebo" adjacent "Porte Cochere" located upon "LOT 6-A" will not meet the minimum front yard and attendant front yard open space requirements pursuant to Chapter 25, the Zoning Code according to the variance application's site plan map or survey map signed and dated January 21, 2008. The variance

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 7  
April 10, 2008

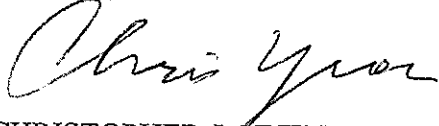
permits the "Dwelling" and triangular shaped "Gazebo" improvements, AS BUILT", to remain upon "LOT 6-A" or subject TMK property according to the variance site plan map.

The applicant or current owners shall contact the DPW-Building Division (Kona) to address the "open" Building Permit-945102 issued to the subject TMK property and secure a building permit for the gazebo abutting the porte cochere from the DPW. The active or "open" building permit (945102) and any building permit and associated construction permits for triangular shaped gazebo adjacent the "Porte Cochere" shall be completed or "finaled" by the DPW-Building Division (Kona) on or before June 30, 2008 and/or prior to sale of the property or transfer of title of the property by the current owners to others.

4. Future or new 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 Variance-VAR 08-005 to be null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cs  
P:\WP60\WRY\FORMLETT\VAR08-005ZCSETBACKAPP.BC

xc: Real Property Tax Office-Kona