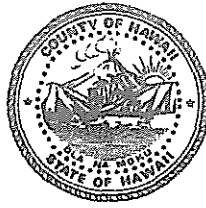


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

June 18, 2009

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE-VAR 08-045**  
**Applicant: KLAUS D. CONVENTZ**  
**Owner: ELLICOTT RENTAL ASSOCIATES LLC**  
**Request: Variance from Chapter 25, Zoning,**  
**Minimum Yards**  
**Tax Map Key: 7-6-022:062, Lot 118**

After reviewing your application and the information submitted, the Planning Director certifies the approval Variance-VAR 08-045 subject to variance conditions. The variance allows portions of "1-Story Dwelling" to remain upon subject TMK property or Lot 118, "AS-BUILT" with a minimum 9.3 feet to minimum 9.5 feet side yard in lieu of minimum 10 feet according to the variance site plan signed and dated September 9, 2007. The variance request is from the property's minimum side yard required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(B).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property, Lot 118 containing 15,000 square feet, Komohana Kai, Unit II, File Plan 1737, is situated at Holualoa 1 and 2, North Kona, Hawaii. The subject TMK property's address is 76-6331 Kololia Street.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). However, subject TMK property does not abut the shoreline.

JUN 23 2009

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 2  
June 18, 2009

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 14, 2008. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS and is signed and dated September 9, 2007. This site plan map denotes of "1-Story Dwelling" was built into minimum 10 feet side yard of "LOT 118" or subject TMK property.

The applicant's background information dated July 14, 2008 states in part:

"The residence was built under Building Permit No. 88425, issued May 12, 1988."

Pending conveyance escrow from former owner to current owner, a small setback violation was revealed when KKM Surveys conducted an AS-BUILT SURVEY ON (sic) September 09, 2007.

**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 any fencing, walls, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Real Property Tax Office building records show 1-Building Permit, 1-Electrical Permit, and 1-Mechanical or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and garage upon "LOT 118" was built and completed pursuant to the building and associated construction permits issued in 1988.

4. **Variance Application-VAR 08-045-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum is dated September 2, 2008 states:

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

- b. The Department of Public Works (DPW) memorandum dated September 3, 2008 states in part:

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 3  
June 18, 2009

“We reviewed the subject application and have no comments or objections.”

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to a list surrounding property owners and proof of mailing notices to the Planning Department. According to the applicant's affidavits, the first and second notices were sent or mailed by US Mail to surrounding property owners on July 14, 2008 and September 1, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 31, 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 owner, submitted the variance application to address or resolve the dwelling encroachments within a minimum side yard. The variance application's site plan denotes the location of the dwelling, detached garage, and other site improvements, “AS BUILT”, upon “LOT 118”. The current owner became aware of building encroachment issue at the time of escrow. No evidence has been found to show indifference or premeditation by previous owner or builders in 1988 to deliberately create or intentionally allow these building encroachments to be built within the affected side yard.

It appears that the existing dwelling and garage improvements were constructed according to a building permits and other associated construction permits issued in 1988 to subject TMK property. It appears that during construction of the dwelling improvements in 1988, the dwelling encroachment within one of the property's side yards went unnoticed by the contractor and agencies.

### **ALTERNATIVES**

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

1. Remove the dwelling encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
Page 4  
June 18, 2009

2. Consolidation of Lot 118 with adjoining lot (TMK: 7-6-022:061, Lot 117) and resubdivision to modify property lines or adjust minimum yards, etc.

### **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 portion of the 1-story dwelling constructed 20 years ago within a minimum 10 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 117) or Kololia Street. It appears that the 20 year old dwelling encroachment does not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portion of the 20 year old dwelling built into affected 10 feet side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or subdivision and allowed to remain by variance.

The applicant's variance application was acknowledged by letter dated August 19, 2008 and additional time to review agency comments and complete a variance background report was necessary. The applicant granted the Planning Director an extension of time to June 30, 2009 to review the variance background render decision on the variance application.

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 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,

Mr. Klaus D. Conventz  
dba Baumeister Consulting

Page 5

June 18, 2009

employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of "1-Story Dwelling" located upon "LOT 118" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated September 7, 2007. The approval of this variance permits the "1-Story Dwelling" to remain, "AS BUILT", upon the subject TMK property or "LOT 118" according to the variance site plan map dated September 7, 2007.
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, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. 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 this Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

WRY:mad

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xc: Real Property Tax Office-Kona