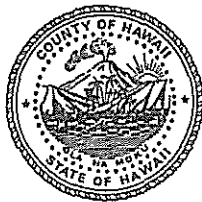


Harry Kim  
Mayor



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 27, 2005

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 04-089**

**Applicant: KLAUS D. CONVENTZ**  
**Owners: HARRIS CORWIN, ET AL.**  
**Request: Variance from Minimum Yards,**  
**Pursuant to Chapter 25, the Zoning Code**  
**Tax Map Key: 7-5-019:029, Lot 4**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 04-089 allows portions of 1-story dwelling or "Dwelling/Deck", to remain on subject property, "AS-BUILT", with minimum 14.9 feet to 15.0 feet front yard and minimum 7.3 feet side yard and portions of the "Deck" with a 0.00 feet side yard open spaces in lieu of the minimum 20 feet front yard, minimum 8 feet side yard, and attendant minimum 4.0 feet side yard open yard requirements, respectively, pursuant to the applicant's variance site plan map-"REVISION 1" that is signed and dated August 10, 2004. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum yards, (1) (2), Section 25-5-98, 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, Lot 4 containing 8520 square feet, is part of Land Court Application 1639, and situated at Kahului 2, North Kona, Hawaii. The TMK property's street address is 75-5978 Alii Drive.

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The property is zoned Resort (V-1.25) by the County and designated "Urban" by the State Land Use (SLU) Commission. The TMK property is within the Special Management Area (SMA); and does abut the shoreline.

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about October 18, 2004. The applicant's variance application site plan or map drawing is drawn to scale and was signed on August 10, 2004. The variance application's site plan or survey map by KKM SURVEYS denotes the building envelope, "Dwelling", and other site improvements on "LOT 4".

The applicant's background dated October 18, 2004 states in part:

"The owners purchased the property by Deed dated August 26, 2004, recorded in the Bureau of Conveyances of the State of Hawaii under documents LCD 3157259 and TCT 712223.

The 1-story single-family dwelling was likely built in the early 1940s, with subsequent Building Permit Nos. 12501, 14527, 20309 all in the 1950s for various additions and remodels. Additional Building Permit Nos. K05114, K06168, K06186 for remodels and additions date from 1975 to 1984.

Building Permit No. K06186, which received final inspection is the permit most closely related to the encroachment issue of this variance application. However, while the permit expressly reflects a carport, which would have properly fit with a 14.0 ft. front yard open space, the actual garage is reflected on every single drawing in the Planning Department's files. That was the crucial problem and first mistake. It is obvious that a garage, and not a carport, received all required inspections. However, a permit for use conversion to living area from carport/garage must still be obtained."

**Note:** The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) located on "LOT 4". The location of the CMU/CRM wall(s), "CRM Pool", and associated wall or landscaping improvements, etc. along the shoreline or property's boundary lines shared with adjoining lots: Lot 3 and Lot 9; are not being addressed by the variance request. The "Dwelling Eave" and "Deck" improvements within the shoreline setback area or "makai" of the "20 Ft. Shoreline Setback" line

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identified or denoted on the survey map submittal shall be addressed and resolved between the applicant/current owner(s) and County and or State agencies. (See variance conditions).

3. **Agency Comments and Requirements-WH (VAR 04-089):**

- a. The Department of Public Works (DPW) memorandum dated November 30, 2004, states in part:

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

**BUILDING**

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. The applicant shall remove any encroachments (sic) or obstructions within the County Right-of Way (sic).”

The attached DPW memorandum dated November 23, 2004 states in part:

“We oppose the application for the reasons 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

The projections do not meet setback requirements and should be corrected.

The exterior wall or projections shall be constructed to provide a one-hour fire resistive occupancy separation.

Others: The electrical permit No. EK04668 was never finalized.”

- b. The State Department of Health (DOH) memorandum dated November 30, 2004, states:

“The Heath Department found no environmental health concerns with regulatory implications in the submittals.”

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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 18, 2004 and November 8, 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**

According to the applicant, portions of the dwelling and deck improvements (near the Keahole side boundary line) encroach into the property's front yard and side (Keahole) side yard. These encroachments are identified on the survey map dated signed and dated August 8, 2004. The applicant, on behalf of the current owners, is trying to address the building status and building encroachments (approximately 21 years old), "AS-BUILT", pursuant to the recent survey map.

The applicant, on behalf of the current owners, filed the variance request and application to address or resolve the building or Dwelling-Deck encroachment issues outside the "20-Ft. Shoreline Setback" line or building encroachments "mauka" of the "20-Ft. Shoreline Setback" line. The variance site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", on "LOT 4". Portions of the dwelling's footprint or living area and deck (near the Keahole side boundary line) are constructed beyond the building set-back line(s) or outside the building envelope into the property's front and side yards and attendant open yard spaces pursuant to the Hawaii County Zoning Code. A portion of the dwelling was originally built on or about 1950 and subsequent dwelling/garage improvements and building repairs were allowed and permitted on "LOT 4" according to SUB VAR NO. 428, SUB 3608, BP No. 05114, and Planning Department letter dated January 24, 1984. The garage improvements nearest the (Keahole) side boundary line were constructed in the 1980s. County building records show the last 2-building permits (K06168 and K06186) issued to the TMK property for the "DWELLING" was issued during January and February 1984, respectively; and, both building permits were closed by the DPW on March 5, 1984. It appears that building inspections of the premises by the respective agencies for building repairs or "dwelling/garage" and "carport" (addition) improvements in 1984 did not disclose any building encroachment issues or building setback irregularities. According to the applicant's background, it appears that the new "carport" built under permit K06186 near the Keahole side boundary or "garage" was subsequently converted into a "living area". (See Variance Permit Conditions).

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The non-permitted "Shed" identified on the variance site plan map will be removed. The "Dwelling" or "Eave" and "Deck" improvements "makai" of the "20-Ft. Side Setback" line or within the 20-foot wide shoreline setback area will be addressed 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 portion of the deck to fit within the correct building envelope prescribed according to Resort ("V") zoning designation and Zoning Code.
2. Consolidation of the property with the Alii Drive Right-of-Way/adjoining (Keahole) property and resubdivision of the resultant property into revised lots to modify property lines and adjustment of minimum front yard and affected side yard.

### **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.

The existing dwelling/garage and attached "carport" buildings were constructed prior to 1984 or permits issued by the County. Given the land use and building permit history, the "Dwelling" and "Deck" encroachments within property's front yard and (Keahole) side yard are not physically noticeable or visually obtrusive from adjacent property(s) or Alii Drive Right-of-Way. (The non-permitted "Shed" building will be demolished and removed). It appears that the 21 + year old building or dwelling encroachments do not depreciate or detract from the character of the surrounding neighborhood 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 November 1, 2004. 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.

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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/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 "Dwelling" and attached "Deck" on "LOT 4" will not meet Chapter 25, the Zoning Code's minimum front yard and (Keahole) side yard requirements according to the variance application's site plan map signed on August 10, 2004. The approval of this variance allows the dwelling/(Kau)garage and deck encroachments within the front yard and (Keahole) side yards to remain, AS BUILT, on the subject TMK property or "LOT 4", pursuant to the variance site plan map.

Submit Plan Approval application to convert the "carport" or garage near the (Keahole) side yard, constructed pursuant to K06186, and identify the wooden deck encroachments near the Keahole side boundary line. (Note: Minimum 2-off-street parking spaces for the dwelling use are required. The required 2-off-street parking spaces shall be identified on the plans submitted with the Application for Plan Approval). The applicant or current owners shall secure Final Plan Approval (FPA) for the conversion of the (Keahole) garage use to dwelling use and deck improvements within 2 years from the date of this letter. The owner(s) shall secure the building and construction permits for the proposed garage to dwelling use conversion and "after-the-fact" permits for the wooden deck near the Keahole side boundary line.

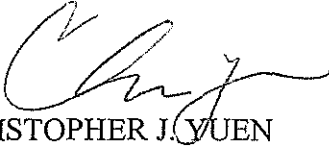
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The "Shed" (non-permitted) and dwelling or related building improvements within Alii Drive (County Right-of-Way), identified on the variance site plan map, shall be removed by the applicant or current owner(s) prior to the any sale of the property or within 60 days from the date of the variance permit letter.

4. The applicant and/or current owners shall confer with the Planning Department-CZM Division before September 1, 2005 to address the "AS-BUILT" "Eave", "Deck", and/or other building or site improvements located "makai" of the 20-Ft. Shoreline Setback" line or within a 20 feet wide shoreline setback area denoted on the variance site plan map dated August 10, 2004.
5. Future building improvements and permitted uses on the subject tax map key property-Lot 4 are subject to State law, County ordinances, and SMA 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/DSA: cd/je  
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xc: Real Property Tax - Kona  
Planning Department - Kona