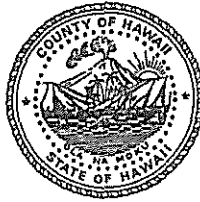


Harry Kim  
Mayor



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 29, 2005

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. 04-097**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** KAMOA POINT LLC.  
**Request:** Variance from Minimum Yards,  
Pursuant to Chapter 25, the Zoning Code  
**Tax Map Key:** 7-7-024:013

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 04-097 allows portions of a dwelling ("2-Story House") to remain, "AS-BUILT", on the subject TMK property, Lot 13, with minimum side yard(s) of minimum 9.4 feet to 9.9 feet and minimum 9.8 feet to 9.9 feet, respectively, in lieu of the minimum 10.0 feet side yard required, respectively, according to the variance site plan map dated September 27, 2004. The variance request is from the subject TMK's minimum side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum yards, (2).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 13 consisting of 10,034 square feet is Lot 13 of 'Alohi Kai Subdivision, being a portion of L.C. Aw. 9971, Ap. 28 to William P. Leleiohoku, is situated at Kaumalumalu, North Kona, Hawaii.

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JUN 28 2005

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 not 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 29, 2004. The applicant's variance application site plan or map drawing is drawn to scale and dated September 27, 2004. The variance application's site plan or map by WES THOMAS ASSOCIATES denotes the building envelope, "2-Story House", and other site improvements on "LOT 13".

The applicant's background dated October 29, 2004 states in part:

"Building Permits Nos. 026125 and 035469 for the dwelling were both issued on March 31, 2003.

Ordinarily the violations would be subject to the "De Minimis Structure Position Discrepancy Recognition" under the Zoning Code, were it not for a miniscule encroachment of the extreme Southeast corner of the dwelling, resulting in a 0.5 ft. violation, which is more than the 0.25 feet as allowed under the "De Minimis" rules for Resort Zoning.

Both side yard setback encroachments are 0.1 feet (1.2 inches), except for the pop-out at the extreme Southeast corner which is .5 ft. (6 inches). It's obvious that the thickness of the finish on the walls was miscalculated when the building was placed; a typical honest design error.

No evidence of malice and intent could be substantiated. The front yard posts/columns comply with the code requirements under the Zoning Ordinance."

**Note:** The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) located on "LOT 13". The location of the CRM retaining and other perimeter wall(s) identified on the map are not being addressed by the applicant or subject variance request.

3. **Agency Comments and Requirements-WH (VAR 04-097):**
  - a. The Department of Public Works (DPW) memorandum dated January 3, 2005, 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).”

The attached DPW memorandum dated December 29, 2004 states in part:

“We oppose the application for the reasons noted below.

Others: The building permit No. 035469 was not finalized.”

- b. The State Department of Health (DOH) memorandum dated January 6, 2005, states:

“The Health 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 October 29, 2004 and December 20, 2004, respectively, by the applicant.
5. Comments from Surrounding Property Owners or Public. No further written agency comments were received. The following letter was received:
  - a. Letter and comments signed by Larry W. Wilson dated November 1, 2004.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, portions of the dwelling (along the makai and mauka property lines) encroach approximately 1.2 inches into the respective side yards. These encroachments are identified on the survey map dated September 24, 2004. The applicant, on behalf of the current owner, is trying to address the building encroachments (approximately 3 + years old), “AS-BUILT”, pursuant to the recent survey map.

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The applicant, on behalf of the current owners, filed the variance request and application to address or resolve the building or 3 + year old encroachment issues. The variance site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", on "LOT 13". Portions of the dwelling's footprint or living area and a column are constructed beyond the building set-back line(s) or outside the building envelope into the property's both side yards pursuant to the Hawaii County Zoning Code. According to the applicant 2-building permits (026125 and 035469) issued to the TMK property were issued on March 31, 2002. It appears that building inspections of the premises by the respective agencies to inspect the foundation and building construction after March 2002 did not disclose any building encroachment issues or building setback irregularities.

#### **ALTERNATIVES**

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

1. Relocation of the column or moving 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 adjoining property(s)-Lot 12/Lot 14 and resubdivision of the resultant property into revised lots to modify property lines and adjustment of minimum side 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.

The dwelling was recently constructed or completed pursuant to building permits issued by the County. It appears that the building encroachments (less than 2 inches) within respective side yards were not detected during construction of the dwelling. The dwelling encroachment issues were detected after dwelling was completed and survey of the property and survey map was completed. It appears that these dwelling encroachments were not physically noticeable by surrounding property owner(s) during construction or noticeable from adjacent property(s) or privately owned Right-of-Way. It appears that the 3 + year old building or dwelling encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land pattern.

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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.

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:

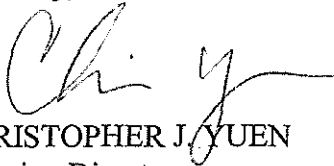
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 "2-Story House" or Dwelling on "LOT 13" will not meet Chapter 25, the Zoning Code's minimum side yard requirements according to the variance application's site plan map dated September 27, 2004. The approval of this variance allows the dwelling encroachments within the respective side yard(s) to remain, AS BUILT, on the subject TMK property or "LOT 13", pursuant to the variance site plan map.
4. The applicant and/or current owners shall confer with the DPW-Kona office to address or close ("final") permit building permit No. 035469 prior to transfer of title or sale of the property.

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5. Future building improvements and permitted uses on the subject tax map key property-Lot 13 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: je  
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xc: Real Property Tax - Kona  
Planning Department – Kona  
Larry W. Wilson