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## County of Hawaii

### PLANNING DEPARTMENT

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June 21, 2005

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

Dear Mr. Conventz:

**VARIANCE PERMIT NO. VAR 04-097<sup>101</sup>**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: RUSSELL REES, ET AL.**  
**Request: Variance from Minimum Yards,  
Pursuant to Chapter 25, the Zoning Code**  
**Tax Map Key: 7-6-003:013, Lot 27**

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 the dwelling ("TWO STORY RESIDENCE" and attached "GARAGE") encroachments to remain, "AS-BUILT", on the subject TMK property, with minimum front yards of 21.55 feet and minimum 22.00 feet, and attendant minimum 20.23 feet and minimum 22.00 feet front yard open space requirements, respectively, in lieu of the minimum 30 feet front yards and attendant minimum 24.0 feet front yard open space requirements according to the variance site plan dated and signed on October 27, 2004. The variance request is from the subject TMK's (Lot 27) minimum front yard(s) and attendant front yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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## **BACKGROUND AND FINDINGS**

1. **Location.** The subject property consisting of 1.291 acres, being "A PORTION OF LOT 27" of the "The PARTITION OF THE HOLUALOA 1 and 2 HUI LANDS", and being a portion of Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu, is situated at North Kona, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use (SLU) Commission.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing on or about November 5, 2004. The applicant's variance application site plan or map drawing is drawn to scale and was dated and signed on October 27, 2004. The variance application's site plan or survey map by Pattison Land Surveying, Inc. denotes the building envelope, dwelling ("TWO STORY RESIDENCE/GARAGE") and other site improvements on "Portion of Lot 27 1.291 Acres".

The applicant's background report states in part:

"The dwelling with attached garage, lanai and storage areas received Building Permit No. 2807, for the dwelling, issued February 17, 1978; Building Permit No. 06335, for additions, issued May 9, 1984; Building Permit No. 06367 for alterations, issued November 9, 1990, but never utilized. All permits were issued to predecessors of the property.

The owners were unaware of any problems until a setback survey conducted on October 27, 2004 by Pattison Land Surveying, INC. (sic) revealed the encroachments.

The violations are limited to the north setbacks of the garage and connecting lanai roof, east to the setback of the attached garage storage extension only."

**Note:** The variance applications site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for the dwelling improvements on "Lot 27". The location of the perimeter "Rock Wall" or perimeter wall improvements denoted on the variance site plan map within "12 Foot Wide Road Reserve" or straddling property lines shared with adjoining privately owned rights-of-way shall be addressed and resolved by the applicant/current owner(s).

3. **Agency Comments and Requirements-WH (VAR 04-101):**

- a. The Department of Public Works (DPW) memorandum dated January 3, 2005, states in part:

“We reviewed the subject 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:

“Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear

Others: The building permit No. 906512 and electrical permit no. Ek05687 (sic) are 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 or objection letters from surrounding property owners and public were received.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated and signed on October 27, 2004.

The applicant, on behalf of the owner, filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling and attached garage, "AS BUILT", on "Lot 27". A small portion of a dwelling/garage's footprint or living area is constructed beyond the denoted building set-back line or building envelope into the minimum (north) and (east) 30 feet front yard(s) and associated front yard open space requirements, respectively, pursuant to the Hawaii County Zoning Code and site plan map. The current owner(s) or applicant became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the previous owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling/garage improvements on Lot No. 27 were started or built over a period of 27 years +/- according to applicant and County building permit records. It appears that building inspections of the premises by the respective agencies during the construction of the dwelling and garage improvements did not disclose any building encroachment issues or building setback irregularities at that time. The location of any "wall" improvements straddling common boundary lines or within the public right-of-way shall be resolved 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 garage to fit within the correct building envelope prescribed by the variance site plan map and Zoning Code.
2. Consolidation with portions of the adjoining property or privately owned rights-of-way 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.

A small portion of the dwelling and attached garage built over 21 years ago within the affected front yard(s) pursuant to the variance site plan map are not physically noticeable or visually obtrusive from the surrounding property(s) or the rights-of-way. 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 December 13, 2004. Additional time to consider agency and review other files 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.

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2. Portions of a "TWO STORY RESIDENCE/GARAGE" on "Lot 27" will not meet Chapter 25, the Zoning Code's minimum front yard and associated front yard open space requirements according to the variance application's site plan map dated and signed on October 27, 2004. The approval of this variance allows the dwelling and attached garage improvements or encroachments identified on the variance application's site plan map to remain, AS BUILT, on the subject TMK property or "Lot 27".
3. The applicant or current owner(s) shall contact the DPW-Kona office to address the status of building permit No. 906512 and electrical permit No. EK05687
4. The perimeter walls straddling common boundary line(s) pursuant to the variance site plan map dated October 27, 2004 shall be addressed by the applicant or between owner(s) of the subject TMK property and adjoining rights-of-way prior to any change in ownership or sale of the property.
5. 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

WRY: je/cd

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xc: Real Property Tax - Kona  
Planning Department - Kona  
OD 90-262 File