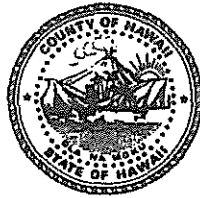


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

June 13, 2006

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

Dear Mr. Conventz:

#### **VARIANCE PERMIT-VAR 05-054**

**Applicant:** KLAUS D. CONVENTZ  
**Owner:** L.K.S. LLC  
**Request:** Variance from Chapter 25, Zoning,  
Minimum yards  
**Tax Map Key:** 7-5-022:068, Lot 102

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 05-054 subject to variance conditions. The variance to permits portions of a new 3-story apartment building including lanais and staircases/landings to remain on Lot 102, "AS BUILT", with a minimum 3.45 feet, minimum 4.70 feet, and minimum 6.65 feet side yard open space(s) in lieu of the minimum 7.00 feet side yard open space requirements according to the variance site plan map (revised) dated May 30, 2005. The variance request is from the subject TMK property's minimum side yard open space requirements pursuant to the to Hawaii County Code, Chapter 25, Zoning, 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 102 containing 10,486 square feet, is within Lono Kona Subdivision, being a portion of Grant 3148 to W.P. Leleiohoku, and situated at Honuaula, North Kona, Hawaii. The property's address is 75-5758 Alahou Street.

The property is zoned Multiple-Family Residential (RM-1.0) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA) and Kailua Village Special District (KVSD). The property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about May 31, 2005 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Don McIntosh Consulting. The variance site plan map, dated May 18, 2005, denotes portions of a 3-story building or "OPEN LANAI" were constructed within the property's minimum side yards spaces of subject TMK property or "LOT 102".

The applicant's background dated May 30, 2005 states in part:

Page 1-2. "The contractor John Edwards Construction Company, INC. (sic) received Building Permit No. B2004-1362K, dated August 23, 2004, after the approval of the 3-story 10 unit apartment building through Plan Approval by the Planning Director and acceptance of the project before the Kailua Village Design Commission.

The property is an irregular shaped lot at the cul-de-sac of Alahou Street, and the apartment building's footprint was accordingly custom-designed to fit the location.

No evidence of malice and intent could be substantiated pending undersigned's site inspection. Owners and contractor would not have benefited from such violation in any way. In fact, in order to place the complicated footprint inside the setback and clear space envelopes, the lay-out was slightly turned from Northwest to West-Northwest, which achieved the goal to place all wall lines (setbacks) properly. Inadvertently it was overlooked that the projections of eaves and lanais/staircases/landings were slightly more extended, thusly resulting in the encroachment into the permissible clear spaces.

The violations are not visually perceptible from neighbor lots and public view, and are limited to the extreme lanai/eave corners, more specific encroachments are 3.55 ft. at the Northwest eave corner over lanai, 2.30 ft. at the Southwest lanai's eave corner, 0.35 ft. at the Southeast lanai corner, for a total eave encroachment are of less than 35 sq. ft. while lanais/landings/staircases encroach less that (sic) 8.00 sq. ft. into required open spaces."

**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 rock walls, paved parking spaces, landscaping, etc., and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

According to the applicant the 3-story 10 unit apartment building and related site improvements were constructed according to Final Plan Approval, building permit, and building and associated construction permits issued by the County.

4. **Agency Comments and Requirements-VAR 05-054:**

- a. The Department of Public Works (DPW) memorandum dated September 2, 2005 states:

“Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).”

Note: The following copy of the DPW-Building Division memorandum dated September 1, 2005 was received by the Planning Department on April 19, 2006 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 building permit for the subject dwelling (sic) was never finalized.

The minimum setbacks shall be maintained as follows:

5 ft. side, 5 ft. rear

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

No openings in the exterior wall are permitted less than 5 ft. from the property line.

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

- b. The State Department of Health (DOH) memorandum dated September 13, 2005 states:

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

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on May 31, 2005 and August 16, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about August 18, 2005.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following comments or objection letter was received:
- 6a. Objection letter dated September 1, 2005 signed by Paul Thompson, Et al. received on September 6, 2005.

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

The applicant, on behalf of the current owner, submitted the variance application to address or resolve the building or “lanais/landings/staircases” and associated eave encroachments within the minimum side yard open spaces identified on the variance site plan map. The variance application’s site plan map was prepared by a surveyor and denotes the location of the building and other site improvements, “AS BUILT”, on “LOT 102”. The owner became aware of encroachment issues after substantial construction of the building was completed. The corners of the open lanai/eave encroachments were discovered and measured by an instrument survey of the building’s footprint. No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard open spaces within the subject TMK property.

It appears that the building improvements and associated site improvements were constructed according to building permit-B2004-1362K and other associated construction permits issued to subject TMK property. It appears that during construction of the building, small portions of the open lanais, eaves, staircase, etc. were inadvertently constructed within the property’s minimum side yard open spaces went unnoticed.

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### **ALTERNATIVES**

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

1. Remove the building encroachments or redesigning or relocating the building to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 102 with adjoining TMK property(s) 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.

It appears that the subject building encroachments were recently constructed into the property's minimum side yard open space. It is felt that the open lanai/staircases are not physically and/or visually obtrusive from the adjacent property (Lot 101 and Lot 102) or right-of-way (Alahou Street). It appears that these encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the property's open yard space 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 August 11, 2005 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and 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:

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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 the 3-story apartment building located on "LOT 102" will not meet the minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 18, 2005. The approval of this variance permits portions of the 3-story 10 unit apartment or open lanais/staircases/landings to remain, "AS BUILT", on the subject TMK property or "LOT 102" according to the variance site plan map dated May 18, 2005.

The applicant and/or current owner shall address the status of Building Permits and related construction permits issued to subject TMK property by the DPW-Building Division. Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to December 31, 2006 or sale of the property or transfer of title of the property to others.

5. Future or building improvements/additions and permitted uses on the property are subject further review under SMA, KVDC, Plan Approval of the Zoning Code and subject to State law and County ordinances and regulations including UBC pertaining to building construction and building occupancy.

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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:cd

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xc: Real Property Tax Office-Kona  
Paul Thompson, Et al.