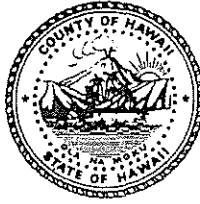


William P. Kenoi  
*Mayor*



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

November 17, 2009

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE-VAR 08-013**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: MITCHELL K. GASPAR, ET AL.**  
**Request: Variance from Chapter 25, Zoning,**  
**Minimum Yards**  
**Tax Map Key: 7-4-013:095, Lot 95**

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After reviewing your variance application, the Planning Director has determined that a variance from Chapter 25, Zoning, minimum yards or variance to permit portions or position of dwelling and attached carport "AS-BUILT" constructed in 1975 upon subject TMK property or Lot 95 according to a survey map signed and dated February 13, 2008 **is not** necessary.

This determination regarding the "AS-BUILT" position of the original dwelling and carport improvements constructed upon Lot 95 circa 1975 is made pursuant to the following findings:

1. **Location.** The subject TMK property or Lot 95, containing 5109 square feet, is within Block D of "Queen Liliuokalani Village" (QLV), Unit 1-B, File Plan 1342, being a portion of Royal Patent 6581, Land Commission Award 8452, Apana 12 to A. Keohokalole, and situated at Keahuolu, North Kona, Hawaii. The TMK property's address is 74-5212 Kauwela Place.

The subject TMK property or Lot 95 is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC). Lot 95 was approved pursuant to an experimental housing project or created by Act 108 and SUB 3284 on July 13, 1974.

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2. **SUB 3284.** Enclosed for your files are extracts and copies of correspondence taken from SUB 3284 file in our Hilo office. Please note Lot 95 or subject TMK property was created by SUB 3284 on July 13, 1973 subject to completion of required (bonded) construction improvements. The enclosed correspondence regarding earlier building 1974 setback determination for Lot 7 or position of the dwelling and carport constructed upon Lot 7 was considered and compared to the position of the dwelling improvements constructed upon subject TMK property or Lot 95 including other dwellings constructed upon lots approved or created by SUB 3284 subsequent to 1972 and other similar dwelling/carport improvements upon lots within QLV completed circa 1974 or 1975:

- 2a. Extract (Page 208-209)-“ACT 108” “Section 46- . Experimental and demonstration housing projects.” The extract or “Section 46-.” states in part:

“Except as hereinafter provided the experimental and demonstration housing projects shall be exempt from all statutes, ordinances, charter provisions and rules or regulations of any governmental agency or public utility relating to the zoning and construction standards for the subdivision, development and improvement of land and the construction and sale of homes thereon; provided that the experimental and demonstration housing projects shall not affect the safety standards or tariffs approved by the public utility commissions for such public utility. The mayor of each county with the approval of the respective council may designate a county agency or official who shall have the power to review all plans and specifications for the subdivision, development and improvement of the land or official shall have the power to approve or disapprove or to make modifications to all or any portion of the plans and specifications. The final plans and specifications for the project approved by the county agency or official, upon subsequent approval by the respective council, shall constitute the standards for that particular project.”

- 2b. Extract regarding “HOUSING-Kona (CHOICE – Queen Liliuokalani)”, circa 1971, including attached to copy of Planning Department letter dated January 13, 1972 granting final subdivision approval to “Queen Liliuokalani Village, Unit 1A” or SUB 3284 after “surety documents to complete construction of improvements” were “deemed adequate”.

- 2c. Letter from County of Hawaii-DPW dated June 19, 1974 regarding sewage system and creation of "sewer easements" subject to County jurisdiction.
- 2d. Certification Letter from Park Engineering, Inc. dated June 27, 1974 stating "This is to certify that staking of the boundary points of all of the Lots within the subject subdivision has been completed".
- 2e. Letter from Hirano Brothers, Limited, dated June 28, 1974 regarding "Queen Liliuokalani Village, Unit 1-B-1, Lot 7, Carport Encroach (sic) into Side Yard Setback".
- 2f. Approval letter or memorandum from the Office of the Mayor-County of Hawaii, dated July 9, 1974, addressed to the Planning Director and Chief Engineer regarding "As-built setback, Unit 1-B-1, Lot 7" or "(Act 108 Demonstration Housing Project)" approved or signed by the Administrator, Act 108, Planning Director, and Chief Engineer (Deputy) on "7/9/74" including referenced attachment or "PLOT PLAN" for Lot 7 dated "6-28-74" and setbacks. This approval letter or memorandum states in part the following:

"The house and carport on the subject Lot 7 have been found by the project contractor to have less than the side yard setback shown on the approved plans.

The as-built house setback is at 6'0". The plan shows a house setback of 8'0". The as built carport is at 3'2". The plan shows a carport setback of 6'0".

Although the error in layout has resulted in a lesser side yard setback than planned, it does not appear to create such an adverse condition to warrant reconstruction at the proper side yard setback and I am willing to approve the as-built setback. See attached plan for details.

In accordance with the authorization granted by the Council for this Act 108 project, the Act 108 may approve modifications from the approved plans with the concurrence of the appropriate County

agencies. Your concurrence to approve the as-built setback is requested.”

Note: The “PLOT PLAN” for Lot 7 does not denote or clearly address the “as built” position of the dwelling or carport roof eaves.

- 2g. Planning Department letter dated July 11, 1974 regarding the status of the bonded subdivision improvements within Queen Liliuokalani Village (QLV) which states in part:

“We have been informed by all of the concerned agencies that the required improvements as per construction drawings have been completed to their approval. Also, your land surveyor has submitted a statement certifying that lots within the subdivision were staked in conformance with the final plat map.”

- 2h. Planning Department memorandum dated August 8, 1975 addressed to Deputy Managing Director (Mayor’s Office) regarding Queen Liliuokalani Village-Unit 1B-4. This memorandum states in part:

“The concept of mix in site orientation of projects such as this, is an important factor when considering the social goals of pride, ownership and individuality. Thus, we commend the proposed layout, as such an attempt has been made to foresee these concerns. The concept will also eliminate the visual monotony that would have otherwise resulted.”

- 2i. Planning Department letter dated April 10, 1989 minimum yard setback determination for (QLV) TMK: 7-4-13:92.
- 2j. Planning Department (PD) letter dated December 12, 1995 letter attached to DPW memorandum dated November 20, 1996, DPW memorandum dated November 29, 1996, and Planning Department letter dated December 10, 1996, and OHCD letter dated December 18, 1996 regarding the status of the QLV and proposed changes to modify or increase lot size and status of the project pursuant to Act 108.

The PD letter dated December 12, 1995 letter states in part:

"As you note, Queen Liliuokalani Village was developed under the State Experimental Housing Act 108. The County Council approved the plans and specifications for the Project and also approved the Mayor's appointment of an Administrator for the Project. It is our understanding that this "Experiment" is still on-going as a Review and Evaluation of the Project which is called for in the County Council's approval of the Project has not been completed."

The PD letter dated December 10, 1996 letter states in part:

- "2. As present, the subject subdivision is considered a non-conforming subdivision relative to the Zoning Code's minimum lot size, minimum lot size average width, minimum lot frontage, minimum yard requirements."
- "4. The location of the existing structures are not very clear on the maps and we do not any authority is exempting any additions which were constructed without the necessary building permits. This must be addressed with the Department of Public Works, Building Division or possibly by the Council under the Experimental Housing Designation. It would be wise to check this matter with the Corporation Counsel's office."
- "5. Any new structural and/or use additions to the existing dwellings and accessory structures will have to comply with the minimum requirements of the Zoning Code."

The County of Hawaii-OHCD letter dated December 18, 1996 states in part:

"As discussed, after the amended plans have been approved the OHCD will request that the Experimental Housing designation be removed and that any approved plans up to that point be treated as a "non-conforming" use or be "grandfathered" in."

2k. The PD memorandum dated March 24, 2003 states in part:

“Queen Liliuokalani Village, comprising 145 single-family residential parcels with lot sizes ranging from 3,500 to 6,400 square feet, was an “experimental” affordable residential housing project that was supported by a Council resolution.”

“Given the small lot sizes, homes were built with yard setbacks much smaller than that required by its current RS-15 zoning. We will allow those homeowners to replace or renovate their homes provided that the current yard setbacks being maintained by their existing residences are preserved and complied with by the new construction. For obvious reasons, this policy will require each applicant to provide an “as-built” site plan showing the location of their existing structure prior to its renovation or replacement.”

3. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about March 3, 2008.

The applicant, on behalf of the owners, is requesting variance to allow portions of a “SINGLE STORY RESIDENCE” with attached “CARPORT/STORAGE” to remain, “AS-BUILT”, on Lot 95 with minimum 6.05 feet to minimum 6.76 feet side yards in lieu of minimum 8.00 feet side yard(s) according to variance application’s site plan or survey map signed and dated February 13, 2008. The variance is from the property’s minimum side yard(s) pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(B).

The applicant’s background information dated March 3, 2008 states in part:

“The dwelling was built under Building Permit No. 64457, issued December 30, 1975.

The owners were unaware of any violation until survey conducted by Pattison Land Surveying, Inc revealed on February 13, 2008 the encroachments while the property is in escrow for conveyance.

As the enclosed Real Property Tax Assessor’s Land Appraisal Card dated May 14, 1976 shows, the current footprint of the dwelling remains unchanged, exactly as

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found and built in 1975/1976.”

4. **County Building Records:**

Hawaii County Real Property Tax Office records indicated Building Permit No. 64457 was issued to subject TMK property on December 30, 1975 (sic). It appears that the “SINGLE STORY RESIDENCE” and attached “CARPORT/STORAGE” constructed upon “LOT NO. 95” denoted on the survey map dated February 13, 2008. Further, after reviewing a copy of the “B No. 64457” or building permit application obtained from the County of Hawaii-DPW in Hilo, the Planning Department notes “Linco model 880-B”; and permitted dwelling to be built upon “LOT 95” having “Distance to nearest interior lot boundary 5-0”. And, it appears that the B No. 64457 was issued by the DPW (Hilo) on October 23, 1975.

**Determination.** The dwelling and attached carport improvements upon Lot 95 and position of these improvements including the roof eaves were built pursuant to a building permit or B No. 64457 issued to subject TMK property or Lot 95 circa 1975 within QLV “experimental housing project” permitted pursuant to Act 108. In view of the findings and earlier setback determination accorded Lot 7, since the dwelling and carport improvements upon Lot 95 and circumstances or status regarding the position of these improvements are similar to the determination accorded Lot 7 within the QLV and allowed or permitted pursuant to Act 108, a variance from minimum yards to permit the dwelling and carport built upon Lot 95 circa 1975 and identified on the current 2008 survey map of Lot 95 is not required.

In view of the circumstances and findings regarding the setbacks accorded to Lot 7 and associated approved “PLOT PLAN” in our files, this office is returning 3-copies of your survey map denoting the approved minimum or approved minimum building setback yards for Lot 95 and copy of B No. 64457. We suggest that a copy of this letter and copy of the survey map including the approved minimum yards and copy of the building permit be forwarded to the surveyor and owner(s) for future reference and their files, respectively.

Thank you for your understanding and patience during our review.

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Should you have any questions regarding the findings or determination please contact our Hilo Office.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithhead Todd". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

BJ LEITHEAD TODD  
Planning Director

WRY:mad  
P:\WP60\WRY\FORMLETT\VAR09-013ZC-VAR-NR-SETBACK.GASPAR-BC

Enclosures/Survey Map-Copy of BP

xc: Real Property Tax Office-Kona (w/o Encs.)