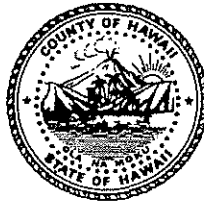


William P. Kenoi  
Mayor



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

August 30, 2010

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE: VAR 10-009**  
**Applicant: KLAUS D. CONVENTZ**  
**Owners: RICHARD TARDIFF, ET AL.**  
**Request: Variance from Chapter 25, Zoning, Minimum Yards**  
**Tax Map Key: 8-1-020:038, Lot A-4-C**

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After reviewing your variance application originally submitted on behalf of John Murphy Trust, the Planning Director certifies the approval of VARIANCE-VAR 10-009, subject to variance conditions. The applicant requests variance to allow portions of 2-story dwelling, including "wrap-around," or enclosed, lanai, to remain, "AS-BUILT," upon Lot A-4-C, having minimum rear yards, ranging between minimum 15.6 feet to minimum 16.4 feet rear yard, in lieu of minimum 20.00 feet requirement, pursuant to survey map dated and signed March 15, 2010, submitted with the application. The variance is from subject TMK property's minimum 20.00 feet rear yard required by Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(A).

### BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, or Lot A-4-C, containing 10,044 square feet, Land Court Application 1609, Map 30, is situated at Ke'eke'e 1<sup>st</sup>, South Kona, Hawai'i. The referenced TMK property's address is 81-6627 Keka'a Place.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban, or "U," by the Land Use Commission (LUC). This parcel is not within an area

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designated Special Management Area (SMA).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about March 24, 2010. The variance application's site plan map is drawn to scale and prepared by KKM SURVEYS. The variance site plan map, signed and dated on March 15, 2010, denotes portions of the "2-Story Dwelling" are built into minimum "20-Ft. Rear Setback" of subject TMK property, or portions "Lanai Screened Enclosure" are built 4.4 feet to 3.6 feet into the minimum 20 feet rear yard.

The applicant's submitted background information, dated March 23, 2010, states, in part, the following:

"The residence was built under Building Permit No. 04898, issued April 09, 1981 and a covered lanai under Building Permit No. 945028, issued January 12, 1994, both permits received final inspections.

Owner was unaware of any problem, when an "AS-BUILT" survey by KKM Surveys, conducted March 15, 2010, revealed the setback violation of the wrap-around screened-in lanai relative to the northerly rear boundary."

**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 position or location of Guard Rail, CRM Wall, Sidewalk, and other pedestrian transition or landscaping improvements denoted on the survey map.

The applicant submitted a letter from the buyers or current owners authorizing the variance application or request for variance.

3. **County Building Records:**

Real Property Tax (RPT) Office records indicate a dwelling was built upon the subject TMK property circa 1975. The County RPT building records indicate that three (3) Building Permits (945028, K04898, B2010-0276K), four (4) Electrical Permits (EK04385, EK04649, E945066, E2010-0403K), and two (2) Mechanical (MK03958, M2010-0236K) or Plumbing Permits were issued to subject TMK property, and it appears that all foregoing permits were deemed "COMPLETED" by the County of Hawai'i (DPW) to construct the 2-Story Dwelling upon "LOT A-4-C" built between 1975 and 2010.

4 **Variance Application-VAR 10-009-Agency Comments and Requirements:**

- a. The State of Hawai'i-Department of Health (SOH-DOH) memorandum dated May 17, 2010, states:

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

- b. The Department of Public Works (DPW) memorandum dated June 4, 2010 states in part:

"The applicant shall remove the stairway (fill stairwell with rock masonry) encroaching within the County right-of-way."

- 5 **Notice to Surrounding Property Owners.** The applicant submitted copy of notices and affidavits, indicating both notices were mailed by "US Mail" to a list of surrounding property owners, which was submitted with the variance application. According to the applicant's affidavits, the first and second notices were sent or mailed to surrounding property owners on March 23, 2010, and May 17, 2010, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 17, 2010.

6. **Comments from Surrounding Property Owners or Public.** No other written agency comments were received. The following written objection letter from a surrounding property owner was received:

- 6a. Objection letter from Dusty Tubbs, dated June 1, 2010, received on June 4, 2010.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the owners, submitted the variance application to address the dwelling's position upon the property and portion of the dwelling built into and/or upon the property's minimum 20 feet rear yard. The variance application's site plan map was prepared by a surveyor, denoting the position of the "2-Story Dwelling" and location of other improvements, "AS BUILT", upon subject TMK property and upon "KEKAA PLACE". The previous and current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built into or upon the affected 20

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feet rear yard.

County records indicate the dwelling improvements were built upon subject TMK property circa 1975, and subsequent dwelling improvements and additions were constructed upon subject TMK property between 1981 and 2010. It appears that during construction of the dwelling improvements between 1975 and 2010, the dwelling encroachment or portions of enclosed lanai built into the property's rear yard went unnoticed by the agencies.

### **ALTERNATIVES**

Alternatives available to the applicant or current owners to address and correct the existing building encroachment into the rear yard include the following actions:

1. Remove the building encroachments or redesign the dwelling to fit within the correct building envelope pursuant to the survey map or minimum yards prescribed by the Zoning Code.
2. Consolidation of subject TMK property with the abutting property (TMK: 8-1-020:019, Lot A-3) and resubdivision to modify property lines to adjust minimum yards, etc.

### **INTENT AND PURPOSE**

The intent and purpose of requiring minimum yards or 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 portions of a 2-story dwelling constructed approximately 29 years ago into and upon subject TMK property's minimum 20 feet rear yard are not physically and/or visually obtrusive from the adjacent property (Lot A-3) or visible from a cul-de-sac identified on the survey map fronting the property (Keka'a Place). It appears that portions of the enclosed lanai of the 29 +/- year-old dwelling do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments into the property's rear yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated May 10, 2010, and additional time to do a site visit and examine any impacts to abutting or surrounding properties was

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necessary. The applicant granted the Planning Director 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:

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 Hawai'i 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 "2-Story Dwelling" including "Lanai Screen Enclosure" constructed upon "LOT A-4-C" will not meet the minimum rear yard required for subject TMK property pursuant to Chapter 25, the Zoning Code. The variance approves or permits the portions of the dwelling, including the lanai improvements, to remain, "AS BUILT", upon subject TMK property or "LOT A-4-C," in accordance to variance site plan map or survey map signed and dated March 15, 2010.

The applicant shall forward a copy of this letter to the past or current owners to discuss the location and position of "stairway" encroaching into and upon County right-of-way cited in DPW memorandum dated June 4, 2010. The current owners shall confer with the DPW-Engineering (Kona) and remove "stairway" or take any corrective action required by the DPW, found to be necessary. The status and nature of the "stairway" shall be addressed between the DPW and current owners on or before December 31, 2010, or prior to sale of subject TMK property to

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others.

4. No permit shall be granted to allow an ohana dwelling, or building permit issued to allow construction of an "ohana" dwelling, upon the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future or new building improvements and permitted uses shall be 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,



BJ LEITHEAD TODD  
Planning Director

WRY:kwr

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xc: Real Property Tax Office-Kona  
DPW-Engineering-Kona  
Planning Department-Kona  
TMK File 8-1-020:019  
Dusty Tubbs