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**County of Hawai'i**  
PLANNING DEPARTMENT

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October 31, 2011

Mr. Klaus D. Conventz  
Baumeister Consulting  
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**SUBJECT: Application: VARIANCE – VAR-11-041**  
**Applicant: Klaus D. Conventz**  
**Owners: Dr. Elizabeth Marshall**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7, Minimum Yards, (a) (1) (A), Section 25-5-77 Other regulations, and Article 4, Division 1 Section 25-4-44, Permitted projections into yards and open space requirements (a).**  
**TMK: 7-8-014:050, LOT 5-B-1**

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Dear Mr. Conventz,

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-041 (VAR: 11-041), subject to variance conditions. The variance will allow portions of the single-family dwelling to remain "as built" and proposed 2<sup>nd</sup> floor addition with a 4.40 feet to 10.00 feet minimum front yard setback and attendant minimum 2.40 feet to 8.00 front yard clear space in lieu of the minimum 15.00 feet front yard setback and attendant 10 feet open space, as required by the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (1)(A). Minimum yards, (a), Section 25-5-77 Other regulations, and 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, consisting of approximately 5,738 square feet of land, is situated within the North Kahaluu Beach subdivision, being a Portion of R.P 6856, L.C. AW. 7713, Apana 6 to V. Kamamalu, at Kahaluu, North Kona, Hawaii. The subject property's street address is 78-1616 Alii Drive.



2. Zoning. The subject property is zoned Single-Family Residence – 7,500 sq. ft. (RS-7.5) by the County and designated Urban or U" by the State Land Use Commission (LUC).
3. Special Management Area. The subject property is located within the Special Management Area (SMA). According to the acknowledgment letter dated June 15, 2011, Special Management Area Use Permit Assessment No. 11-000666 (SAA-11-000666) was issued to allow for the construction of the proposed second floor addition to the existing dwelling and related repairs.
4. Variance Application-Site Plan. The owner submitted the variance application, attachments, and filing fee on June 24, 2010, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Chrystal Thomas Yamasaki, LPLS, denotes the portions of the "Single Story Dwelling" built into the minimum 15 feet front yard setback and 10 feet open space requirement.
5. County Building Records.
  - a. The dwelling was built according to the Real Property Tax Office records in 1954 under Building Permit No. 13812, issued on June 23, 1953. Additions were made under Building Permit No. 30185, issued on November 19, 1964 and Permit No. 05759 for roof replacement issued on February 4, 1983.
6. Agency Comments and Requirements.
  - a. The State Department of Health (DOH) memorandum dated August 9, 2011 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments have been received from the Department of Public Works as of this date.
7. Public Notice. A copy of first and second notices was sent by the applicant via USPS to surrounding property owners. According to the affidavit submitted to the Planning Department, the first notice was mailed on June 24, 2011 and the second notice was mailed on August 15, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 12, 2011.
8. Comments from Surrounding Property Owners or Public. No written comments or objections from surrounding property owners or general public were received by the Planning Department.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant submitted the variance application to address and/or resolve the existing single family dwelling and the proposed 2<sup>nd</sup> floor addition encroachments, to allow for a 4.40 feet to 10.00 feet minimum front yard setback, in lieu of the minimum 15.00 feet front yard setback, and front yard open space ranging from 2.40 feet to 8.00 feet in lieu of the minimum 10.00 feet open space requirement to remain upon the subject property in accordance with recent survey map. The variance application's site plan denotes the location of the single family dwelling situated on "Lot 5-B-1".

The applicant has stated in its background report: "...the owner intends to remodel the home, including repair and maintenance of the existing first floor, as well as for the addition of a second floor bedroom area. For design and structural reasons, the owner proposes to use the exterior walls along Alii Drive as supporting walls for the upstairs extension and its load path of structural members. This includes the changes and/or modifications of the downstairs bearing walls (interior and exterior)."

The applicant contends that the provisions of Section 25-2-51, Grounds for Variances, would apply in its entirety taking into consideration the very special and unusual placement situation of the vast majority of dwelling along the ocean side of Alii Drive

### **ALTERNATIVES**

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the as-built 2-story dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. *Any structural or design correction would be expensive and cost prohibitive.*

Another alternative is to consolidate the subject property with the road right-of-way (Alii Drive) fronting the subject property and re-subdivide consolidated property to modify property lines and adjust minimum front yard setback. *It is felt that this option is not practical and reasonable.*

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision or development are to assure that adequate air circulation and exposure to light are available between permitted

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structure(s)/uses and boundary/property lines.

The applicant's variance application was acknowledged by letter dated August 4, 2011. Additional time to review the variance application was required. The applicant granted the Planning Director additional time to render a decision on the Variance Application to October 31, 2011.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the years of existence of the structure. Also, no objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance application is approved subject to the following variance 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. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
4. The existing dwelling and the proposed 2<sup>nd</sup> level addition will not meet the minimum front yard setback pursuant to Chapter 25, the Zoning Code. The approval of this variance allow for the existing dwelling to remain and the proposed 2<sup>nd</sup> level addition to be constructed upon the subject property in accordance to the survey map dated October 5, 2009.

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5. Encroachments into the public right of way of Alii Drive to be addressed as follows:
  - a. The roof overhang of the dwelling to be cut back to the property line;
  - b. The garage at the Northeast corner of the property shall be permanently removed;
  - c. The accessory building at the southeast property corner including extension into Lot 6-A (South) shall be permanently removed; and
  - d. The encroaching privacy wall along Alii Drive including planter inside Alii Drive will be permanently removed or the relocated onto the subject property.
  
6. 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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 11-041 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Kona Office  
Real Property Tax Office (Kona)