

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by:

Developer VIVIAN W. C. KEE
Address 615 Piikoi Street, Suite 2000, Honolulu, HI 96814

Project Name(*): 1329 DOMINIS
Address: 1329 Dominis Street, Honolulu, HI 96822

Registration No. 3827 Effective date: May 10, 2000
Expiration date: June 10, 2001

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission nor any other government agency. Neither the Commission or any other government agency has judged or approved the merits or value, if any, of the project or of purchasing of an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of any apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

PRELIMINARY: (yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

FINAL: (white) The developer has legally created a condominium and has filed complete information with the Commission. [X] No prior reports have been issued. [] This report supersedes all prior public reports. [] This report must be read together with

X SUPPLEMENTARY: (pink) This report updates information contained in the: [] Preliminary Public Report dated: [X] Final Public Report dated: February 23, 1998 [] Supplementary Public Report dated:

And [] Supersedes all prior public reports. [X] Must be read together with Final Public Report [X] This report reactivates the Final Public Report public report(s) which expired on March 23, 1999

(*) Exactly as named in the Declaration

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

Required and attached to this report
as Exhibit "G" (Revised)

Not Required-Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

No prior reports have been issued by the developer.

Changes made are as follows:

1. Amend Declaration of Condominium Property Regime:
 - a. to include a lanai as a limited common element for Unit D.
 - b. amend the descriptions of the units to clarify that each unit consists of two bedrooms.
 - c. to disclose a variance to retain a carport and off-street parking spaces to encroach into a required side yard.

2. Amend the Condominium Map to change the roof overhang of the carport containing parking spaces for the project.

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I PERSONS CONNECTED WITH THE PROJECT

Developer: VIVIAN W. C. KEE Phone: (808) 591-8702
Name* (Business)
615 Piikoi Street, Suite 2000
Business Address
Honolulu, HI 96814

Names of officers and directors of developers who are corporations; general partners of a partnership; partners of a Limited Liability Partnership (LLP); or manager and members of a Limited Liability Company (LLC)(attach separate sheet if necessary):

N/A

Real Estate Broker*: VW, Inc. Phone: (808) 395-2128
Name (Business)
615 Piikoi Street, Suite 2000
Business Address
Honolulu, HI 96814-3142

Escrow: Title Guaranty Escrow Services, Inc. Phone: (808) 521-0211
Name (Business)
235 Queen Street
Business Address
Honolulu, HI 96813

General Contractor*: Construction Design and Development Corporation Phone: (808) 739-2802
Name (Business)
P.O. Box 240997
Business Address
Honolulu, HI 96824-0997

Condominium Managing Agent: None. Self-managed by the Owners Association Phone: (808)
Name (Business)

Business Address

Attorney for Developer: Glenn M. Adachi Phone: (808) 526-3880
Name (Business)
841 Bishop St., #1601
Business Address
Honolulu, HI 96813-3916

*For Entities: Name of corporation, partnership, Limited Liability Partnership (LLP), or Limited Liability Company (LLC)

**II. CREATION OF THE CONDOMINIUM;
CONDOMINIUM DOCUMENTS**

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests, and other information relating to the condominium project.

The Declaration for this condominium is:

Proposed
 Recorded - Bureau of Conveyances: Document No. 97-127393
Book _____ Page _____
 Filed - Land Court: Document No. _____

The Declaration referred to above has been amended by the following instruments [state name of document, date and recording/filing information]: First Amendment of Declaration recorded as Document No. 98-011470. Second Amendment recorded as Doc. No. 2000-053073 .

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment number, dimensions of each apartment.

The Condominium Map for this condominium project is:

Proposed
 Recorded - Bureau of Conveyances Condo Map No. 2597
 Filed - Land Court Condo Map No. _____

The Condominium Map has been amended by the following instruments [state name of document, date and recording/filing information]: Second Amendment to Declaration dated April 13, 2000, recorded as Document No. 2000-053073.

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

Proposed
 Recorded - Bureau of Conveyances: Document No. 97-127394
Book _____ Page _____
 Filed - Land Court: Document No. _____

The Bylaws referred to above have been amended by the following instruments [state name of document, dated and recording/filing information]:

5. Special Use Restrictions:

The Declaration and Bylaws may contain restrictions on the use and occupancy of the apartments. Restrictions for this condominium project include but are not limited to:

Pets: Household pets and other animals as permitted by applicable zoning ordinances.

Number of Occupants: _____

Other: _____

There are no special use restrictions.

6. Interior (fill in appropriate numbers):

Elevators: None Stairways: 2 Trash Chutes: None

<u>Apt.No.</u>			<u>Net</u>	<u>Net</u>	
<u>Type</u>	<u>Quantity</u>	<u>BR/Bath</u>	<u>Living Area (sf)*</u>	<u>Other Area (sf)</u>	<u>(Identify)</u>
<u>Unit A</u>	<u>1</u>	<u>2/1</u>	<u>497</u>	<u>N/A</u>	<u>_____</u>
<u>Unit B</u>	<u>1</u>	<u>2/1</u>	<u>497</u>	<u>N/A</u>	<u>_____</u>
<u>Unit C</u>	<u>1</u>	<u>2/1</u>	<u>497</u>	<u>N/A</u>	<u>_____</u>
<u>Unit D</u>	<u>1</u>	<u>2/1</u>	<u>507</u>	<u>80</u>	<u>Lanai</u>
<u>Unit E</u>	<u>1</u>	<u>2/1</u>	<u>507</u>	<u>N/A</u>	<u>_____</u>
<u>Unit F</u>	<u>1</u>	<u>2/1</u>	<u>507</u>	<u>N/A</u>	<u>_____</u>
<u>Unit G</u>	<u>1</u>	<u>2/1</u>	<u>507</u>	<u>N/A</u>	<u>_____</u>

Total Number of Apartments: 7

***Net Living Area is the floor area of the apartment measured from the interior surface of the apartment perimeter walls.**

Other documents and maps may give floor area figures which differ from the those above because a different method of determining the floor area may have been used.

Boundaries of Each Apartment: See Exhibit "A" attached hereto

Permitted Alterations to Apartments: As noted in Section XVI of the Declaration, individual unit owners may, at their sole discretion and at their own expense, renovate, remodel, and/or other make alterations or improvements to the interior spaces of their condominium unit, PROVIDED, HOWEVER, that such alterations are specifically limited to the confines of the individual unit, as defined in Section III(c) of the Declaration.

11. Conformance to Present Zoning Code

a. No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows: See Exhibit H

Allow carport and off-street parking spaces to encroach into side yard with less than the required landscaping.

b. Conforming/Non-Conforming Uses, Structures, Lot See Exhibit H*

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u> X </u>	<u> </u>	<u> </u>
Structures	<u> </u>	<u> X* </u>	<u> </u>
Lot	<u> X </u>	<u> </u>	<u> </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure, or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration, are:

described in Exhibit B .

as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project.

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit C.

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

described in Exhibit B.

as follows:

- E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit F describes the encumbrances against the title contained in the title report dated March 16, 2000 and issued by Title Guaranty of Hawaii, Inc.

IV. CONDOMINIUM MANAGEMENT

A. Management of the Common Elements: The Association of Apartment Owners is responsible for the management of the common elements and the overall operation of the condominium project. The Association may be permitted, and in some cases may be required, to employ or retain a condominium managing agent to assist the Association in managing the condominium project.

Initial Condominium Managing Agent: When the developer or the developer's affiliate is the initial condominium managing agent, the management contract must have a term of one year or less and the parties must be able to terminate the contract on notice of 60 days or less.

The initial condominium managing agent for this project, named on page five (5) of this report, is:

- not affiliated with the Developer the Developer or the Developer's affiliate.
- self-managed by the Association of Apartment Owners other _____

B. Estimate of Initial Maintenance Fees:

The Association will make assessments against your apartment to provide funds for the operation and maintenance of the condominium project. If you are delinquent in paying the assessments, a lien may be placed on your apartment and the apartment may be sold through a foreclosure proceeding.

Initial maintenance fees are difficult to estimate and tend to increase as the condominium ages. Maintenance fees may vary depending on the services provided.

Exhibit G* contains a schedule of estimated initial maintenance fees and maintenance fee disbursements (subject to change). *Developer discloses that no reserve study was done in accordance with Chapter 514A-83.6, HRS, and replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended. Mandatory reserves assessment and collection in effect beginning 1994 budget year.

C. Utility Charges for Apartments:

Each apartment will be billed separately for utilities except for the following checked utilities which are included in the maintenance fees:

- None Electricity (_____ Common Elements only _____ Common Elements & Apartments)
- Gas (_____ Common Elements only _____ Common Elements & Apartments)
- Water Sewer Television Cable
- Other _____

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other Unilateral Agreement and Declaration for Conditional Zoning (see Exhibit F)

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce and Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P.O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 3827 filed with the Real Estate Commission on October 17, 1997.

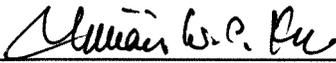
Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock WHITE paper stock PINK paper stock

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

VIVIAN W. C. KEE

Printed Name of Developer

By: 
Duly Authorized Signatory*

5/10/00
Date

VIVIAN W. C. KEE, Developer/Owner

Print Name & Title of Person Signing Above

Distribution:

Department of Finance, City and County of Honolulu
Planning Department, City and County of Honolulu

**Must be signed for a: corporation by an officer; partnership or Limited Liability Partnership (LLP) by the general partner; Limited Liability Company (LLC) by the manager or member; and for an individual by the individual.*

EXHIBIT A
INDIVIDUAL UNIT DESCRIPTIONS

The Declaration of Condominium Property Regime and plans submitted by the Developer indicate that 1329 DOMINIS is a fee simple condominium conversion project consisting of a total of seven condominium units, all contained in a single two-story wood-frame structure. Specifically, the units are comprised of the spaces within the perimeter walls, floors and ceilings of each of the seven residential dwelling units of said structure. The units are described as follows:

a. "Unit A", located on the ground level of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room and kitchen, and contains a net living area of approximately 497 square feet.

b. "Unit B", located on the ground level of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room and kitchen, and contains a net living area of approximately 497 square feet.

c. "Unit C", located on the ground level of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room and kitchen, and contains a net living area of approximately 497 square feet.

d. "Unit D", located on the second floor of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room, kitchen and lanai, and contains a net living area of approximately 507 square feet and a lanai area of 80 square feet.

e. "Unit E", located on the second floor of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room and kitchen, and contains a net living area of approximately 507 square feet.

f. "Unit F", located on the second floor of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room and kitchen, and contains a net living area of approximately 507 square feet.

g. "Unit G", located on the second floor of the building, consists of a two-bedroom apartment containing two bedrooms, bathroom, living room and kitchen, and contains a net living area of approximately 507 square feet.

(Revised 4/25/00)

EXHIBIT C
LIMITED COMMON ELEMENTS

Certain parts of the common elements, herein referred to as the "limited common elements", are designated and set aside for the exclusive use of one or more apartments, and such apartment(s) shall have appurtenant thereto exclusive easements for the use of such limited common elements. The limited common elements so set aside and reserved are as follows:

(a) The stairway providing ground level access to Units D and E located on the second floor of the building is deemed a limited common element appurtenant to and for the exclusive use of said Units D and E.

(b) The stairway providing ground level access to Units F and G located on the second floor of the building is deemed a limited common element appurtenant to and for the exclusive use of said Units F and G.

(c) One (1) automobile parking space shall be appurtenant to and for the exclusive use of each condominium unit. The particular parking stall appurtenant to each unit shall have the same letter designation as the condominium unit to which it is appurtenant. Said parking spaces are shown and designated on the Condominium Map.

(d) The lanai appurtenant to Unit D located on the second floor of the building is deemed a limited common element appurtenant to and for the exclusive use of Unit D.

All costs of every kind pertaining to the aforesaid limited common elements, including, but not limited to, costs of landscaping, maintenance, repair, replacement and/or improvement, shall be borne solely by the owner(s) of the unit(s) to which said limited common elements are appurtenant.

(Revised 4/25/00)

EXHIBIT F
ENCUMBRANCES AGAINST TITLE

An encumbrance is a claim against or a liability on the property. The following list describes the encumbrances against the title contained in the status title report dated March 16, 2000, issued by Title Guaranty of Hawaii, Inc.:

1. Tax Map Key: (1) 2-4-025-058, County of Hawaii. Area assessed: 7,840 square feet. For real property taxes as may be due and owing, reference is made to the Director of Finance, City and County of Honolulu.

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. Unilateral Agreement and Declaration for Conditional Zoning, dated April 22, 1992 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 92-062408.

4. Mortgage in favor of CITY BANK, a Hawaii corporation, dated September 18, 1996 and recorded in said Bureau as Document No. 96-135263. Original consideration: \$ 800,000.00

5. Financing Statement in favor of CITY BANK, a Hawaii corporation, dated September 20, 1996, recorded as Document No. 96-135264.
In addition to the above, the following documents have also been recorded:

6. Declaration of Condominium Property Regime dated August 1, 1997, recorded as Document No. 97-127393; By-Laws of the Association of Condominium Owners of the " 1329 DOMINIS" Condominium Project, dated August 1, 1997 and recorded as Document No. 97-127394; Condominium Map No. 2579.

First Amendment of Declaration recorded as Document No. 98-011470.
Second Amendment of Declaration of Condominium Property Regime dated April 13, 2000 and Condominium Map recorded as Document No. 2000-053073.

(Revised 4/25/00)

**EXHIBIT G
DISCLOSURE ABSTRACT**

**1329 DOMINIS
Condominium Project
(Revised 4/25/00)**

Developer

Vivian W. C. Kee
625 Piikoi Street, Suite 2000
Honolulu, Hawaii 96814
Phone: (808) 591-8702

Project Manager

Project is to be self-managed

Use of Condominium Units

All units comprising the Project may be occupied and/or used only for those purposes permitted by applicable land use laws and zoning ordinances. There is no commercial development in the Project.

Warranties

The structure comprising the Project and containing the seven dwelling units was completed in July, 1997. Each of the condominium units is being offered for sale with the standard one-year building warranty. The appliances included with said unit, if any, are covered by the appliance manufacturers' warranties, as applicable.

Structural Components and Mechanical & Electrical Installations

Based on a report prepared by an independent registered architect, it is the Developer's opinion that all structural components and mechanical and electrical installations material to the use and enjoyment of the individual condominium units appear to be sound and in satisfactory working condition. However, **NO REPRESENTATIONS OF ANY KIND ARE MADE AS TO THE EXPECTED USEFUL LIFE, IF ANY, OF THE STRUCTURAL COMPONENTS AND MECHANICAL AND ELECTRICAL INSTALLATIONS MATERIAL TO THE USE AND ENJOYMENT OF THE CONDOMINIUM UNIT(S).**

Estimated Maintenance Fee Assessments and Disbursements

MAINTENANCE FEE ASSESSMENTS: The Developer estimates that the annual maintenance fee assessments and monthly costs for each condominium unit to cover casualty and liability insurance, water service charges, and grounds/yard maintenance, etc. shall be as follows:

	<u>Monthly</u>	<u>Annual</u>
Unit A	\$ 321.23	\$ 3,854.76
Unit B	\$ 321.23	\$ 3,854.76
Unit C	\$ 321.23	\$ 3,854.76
Unit D	\$ 327.83	\$ 3,933.93
Unit E	\$ 327.83	\$ 3,933.93
Unit F	\$ 327.83	\$ 3,933.93
Unit G	\$ 327.83	\$ 3,933.93

MAINTENANCE FEE DISBURSEMENTS: Developer's estimate of the Project's Maintenance Fee Disbursements is as follows:

	<u>Monthly</u>	<u>Annual</u>
Casualty/Liability insurance	\$ 1,125.00	\$ 13,500.00
Water Service charges	350.00	4,200.00
Grounds/yard maintenance	100.00	1,200.00
Reserves for Improvements	700.00	8,400.00
TOTAL	\$ 2,275.00	\$ 27,300.00

The figures contained herein are based on generally accepted accounting principals.

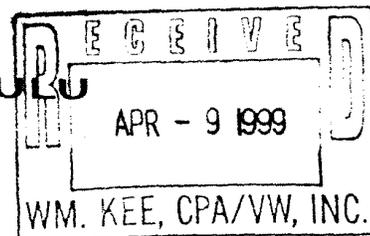
Code Violations; Variance

A variance (1999/VAR-8) was granted to allow (retain) a carport and off-street parking spaces to encroach into a required side yard, with less than the required landscaping, in accordance with variance plans subject to certain conditions contained in the Findings of Fact, Conclusions of Law, and Decision and Order for said variance. (A copy is attached as Exhibit H)

To the best of the knowledge, information and belief of the undersigned, there are no outstanding notices of uncured violations of the building code or other municipal regulations of the City and County of Honolulu.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET • HONOLULU, HAWAII 96813
PHONE: (808) 523-4414 • FAX: (808) 527-6743



JEREMY HARRIS
MAYOR



JAN NAOE SULLIVAN
DIRECTOR

LORETTA K.C. CHEE
DEPUTY DIRECTOR
(PD)

April 8, 1999

Mr. Craig T. Kugisaki
Pacific Tower 2828, 1001 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. Kugisaki:

Request : 1999/VAR-8 (Reconsideration of Zoning
Variance No. 97/VAR-22)
Applicant : Vivian W. C. Kee
Agent : Craig Kugisaki
Location : 1329 Dominis Street - Makiki
Tax Map Key: 2-4-25: 58

The Director of Planning and Permitting has granted **PARTIAL APPROVAL** of the above variance, subject to certain conditions. A copy of the Director's Findings of Fact, Conclusions of Law, and Decision and Order, including the conditions of approval, is attached. Therefore, you must correct the violation by removing the carport roof overhang within the 10-foot left side yard, and the second-floor balcony encroachment, or be subject to a civil fine. Failure to pay the fine and/or correct the violation will result in referral to the Department of the Corporation Counsel for civil remedy.

NOTE: If the variance conditions contain time limits, the applicant is responsible for complying within those time limits, or the variance will lapse. If the variance is "after-the-fact", and it lapses because of failure to comply with the conditions, the applicant will be in violation of the zoning code and subject to enforcement proceedings. A new application for the same variance will not be accepted within 12 months of the lapse date.

This variance is limited to those sections of the Land Use Ordinance stated in the Findings of Fact and/or Decision and Order; and shall not be construed as approval of any other permit or review by the Department of Planning and Permitting or by any other agency.

EXHIBIT H

Mr. Craig T. Kugisaki
Page 2
April 8, 1999

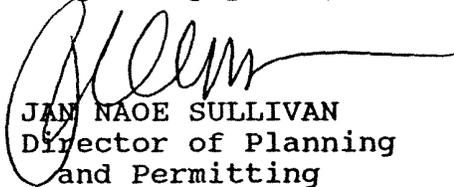
Any party (to the case) wishing to appeal the Director's action must submit a written petition to the Zoning Board of Appeals (ZBA) within 30 calendar days from the date of mailing or personal service of the Director's written decision. (Zoning Board of Appeals Rules Relating to Administrative Procedure, Rule 3.2(a), APPEAL DEADLINE). Essentially, the Zoning Board of Appeals rules require that a petitioner show that the Director based her action on an erroneous finding of a material fact, and/or that the Director acted in an arbitrary or capricious manner, or manifestly abused her discretion. The ZBA can only consider the evidence previously presented to the Director of Planning and Permitting.

Failure to comply with ZBA Rule 3, Procedure for Appeal from Action of the Director, may result in the dismissal of the appeal. Copies of the ZBA rules are available at the Department of Planning and Permitting. Appeals should be addressed to:

Zoning Board of Appeals
650 South King Street, 7th Floor
Honolulu, Hawaii 96813

If you have any questions or need additional information concerning this variance, please contact Pamela Davis of our staff at 523-4807.

Very truly yours,



JAN NAOE SULLIVAN
Director of Planning
and Permitting

JNS:nt
Doc No. 3178

Attach.

✓ cc: Vivian W. C. Kee
Corporation Counsel (Duane Pang)
Building Division (Roger Vierra)

On the second floor, a balcony encroaches a maximum of 3.6 feet into the side yard. The applicant proposes to remove a portion of the balcony, so that it no longer encroaches into the 10-foot side yard.

Note: The reconsideration is primarily to address portions of the request which were previously denied; however, it includes other portions of the variance as necessary for completeness. Therefore, this Decision and Order supplements and/or supersedes the previous variance action (No. 97/VAR-22).

3. Variance Required: Land Use Ordinance (LUO) Sections 3.30, 5.50-1 (Table 5.3-B), and 7.50-4, pertaining to yard and landscaping regulations.
4. Applicant's Justification: The applicant provided justification statements which are part of the file.

II. FINDINGS OF FACT

On the basis of the evidence presented, the Director has found:

1. Description of Site: The irregularly shaped site slopes down gently from front to rear.
2. Land Use: The site is developed with a 2-story, 7-unit multifamily dwelling and an 8-car carport. There is a CMU fence wall, about 6 feet high, along the left (diamondhead) side property line. The surrounding neighborhood is predominantly in single- and multi-family dwelling use. The adjoining lot (Parcel 8, diamondhead side) contains a meeting facility (Honolulu Church of Christ).
3. Other Permits and Approvals:

- a. Punchbowl Special District: On August 2, 1993, the Director of Land Utilization approved a Punchbowl Special District (PBSD) permit (No. 93/PB-7) for a two-story, 5-unit multifamily dwelling. The permit became null and void on October 21, 1994, because a building permit was not issued by that date, as required by Condition 12 of the approval.

On August 23, 1995, the Director approved PBSD permit No. 95/PB-12, for a 7-unit multifamily dwelling with 8 parking spaces and a park/activity area. (Variance approval will require modification of this permit.)

- b. Building Permits: On August 23, 1979, the Building Department issued a building permit (No. 126652) for a fence wall to enclose the property.

On July 31, 1996, the Building Department issued a building permit (No. 391950), for a new multifamily dwelling.

- c. Park Dedication: On February 8, 1996, the Director approved a park dedication permit (No. 96/PARK-1) for a multifamily dwelling.
4. Previous Variance Action: On September 18, 1997, the Director granted partial approval of variance No. 97/VAR-22. The Director denied the variance to allow the carport and second-floor balcony to encroach into a required side yard, and a roof overhang to exceed the maximum projection; and, approved a variance to allow off-street parking spaces to encroach into the required side yard, with less than the required landscaping.
5. Zoning Board of Appeals (ZBA): On October 16 and 17, 1997, the architect and contractor each filed an appeal (Nos. 97/ZBA-27 and -28), of the Director's action (partial approval of variance No. 97/VAR-22).

On October 8, 1998, the petitioners requested that the variance be remanded to the Director, and that the appeals be withdrawn.

6. Violation: On May 7, 1997, the Building Department issued a notice of violation and stop-work order (No. BV97-5-31), for a setback violation.
7. Public Hearing Testimony: The applicant and the agent spoke in support of the request. The agent said the balcony will be cut back to eliminate the side yard encroachment. He said the carport roof overhang will be cut off entirely, leaving only a 4-inch fascia trim board projecting beyond the column (wall) line in the left side yard. He said removal of the overhang would be consistent with the previous partial variance approval to allow parking spaces to encroach into the side yard. He noted that removal of the overhang will also address the safety concerns voiced by representatives of the adjacent church, during the first variance.

The DPP staff asked if the applicant had tried to purchase a strip of land from the church, which could be consolidated with the site, thereby eliminating the encroachments. The applicant stated that the church "flatly refused" to sell. No other testimony was given.

8. The Director may grant a variance upon the ground of unnecessary hardship if the record shows that (1) the applicant would be deprived of the reasonable use of such land or building if the provisions of the zoning code were strictly applicable. Ordinarily, it would be difficult to

find that the applicant would be denied reasonable use if not allowed a carport to encroach into the 10-foot side yard. The site contains a 7-unit multifamily dwelling with a large carport, which affords reasonable development. Nevertheless, there are certain circumstances which support a variance for limited yard encroachment.

At the public hearing, the agent indicated that the balcony encroachment will be removed, and the 4.1-foot roof overhang will be removed within the left side yard. The only encroachment to remain (except for the off-street parking spaces) will be the carport columns and a portion of the roof structure. The agent explains that the columns are essential because they provide the structural support for the roof. If they were removed, the entire roof would have to be demolished and rebuilt. Thus, the yard encroachments will be reduced to the extent practical, and the modified request is a reasonable solution.

9. The Director may grant a variance upon the ground of unnecessary hardship if the record shows that (2) the request of the applicant is due to unique circumstances and not the general conditions in the neighborhood, so that the reasonableness of the neighborhood zoning is not drawn into question. The site is irregularly shaped, but gently sloped and without adverse conditions that prevent conforming development. Nevertheless, as discussed above, the applicant proposes to remove the encroachments to the extent practical. The support columns will encroach a maximum of 3.90 feet into the 10-foot left side yard, but the 4.1-foot roof overhang will be removed. And, the 3.6-foot maximum balcony encroachment will be removed. Under the circumstances, the lesser request is supportable. However, the carport encroachment should be allowed for the life of the structure only, since it could be reconstructed in compliance with the zoning code. Further, the carport should not be given a status which is superior to that of nonconforming structures.
10. The Director may grant a variance upon the ground of unnecessary hardship if the record shows that (3) the request, if approved, will not alter the essential character of the neighborhood nor be contrary to the intent and purpose of the zoning ordinance. As modified, the request should not alter the essential character of the neighborhood. The remaining encroachments (the carport wall line and off-street parking spaces) are not conspicuous from the street. And, removing the roof overhang will address the safety concerns raised by representatives of the adjoining church (Parcel 8) during the previous variance review. However, as a condition of variance approval, the applicant should provide additional landscaping between the encroaching carport and the CMU wall along the left property line, which will buffer views of the

structure from the adjacent lot. It is noted that the Punchbowl Special District permit was approved on the basis of a conforming carport; i.e., which complied with the 10-foot yard. Some additional landscaping is required to buffer the 3.90-foot yard encroachment. Additionally, since the balcony was not included in the Punchbowl Special District permit approval (No. 95/PB-12), modification of that permit is required. Finally, the applicant must obtain a new or revised building permit to authorize the encroachments as approved by this variance; variance approval does not relieve him of that responsibility.

III. CONCLUSIONS OF LAW

1. There is evidence that the applicant would be deprived of reasonable use of the land or building if required to comply fully with the provisions of the zoning code.
2. The request of the applicant is due in part to unique circumstances and does not in all respects question the reasonableness of the neighborhood zoning.
3. The request will not in all respects alter the essential character of the neighborhood, and, if modified as required, will not be contrary to the intent and purpose of the zoning ordinance.

IV. DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the Director of Planning and Permitting hereby DENIES the application for a variance to allow (retain) a second-story balcony, for a multifamily dwelling, to encroach into a required side yard, and a roof overhang to exceed the maximum projection and encroach into a required side yard; and APPROVES a variance to allow (retain) a carport and off-street parking spaces to encroach into a required side yard, with less than the required landscaping, in accordance with the approved variance plans, subject to the following conditions:

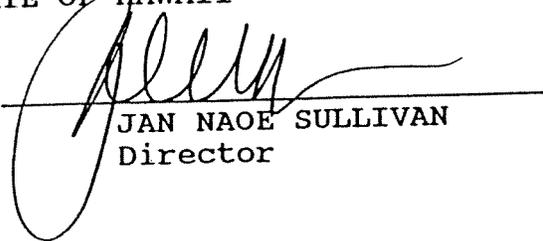
1. The variance shall be for the life of the structures (apartment building and carport) only.
2. Prior to the issuance of a building permit, and within 30 days from the date of the Order, the applicant shall submit a revised landscape plan showing an additional canopy-form tree within the left side yard, between the carport and left property line, in place of the existing avocado tree (to be relocated). The new tree shall have a trunk diameter of at least 4 inches, and a spread of 10-15 feet.

3. The applicant shall obtain a new or revised building permit for the apartment building, which shows the balcony set back outside the required side yard, and the roof overhang of the carport in the left side yard removed, within 60 days from the date of the Order, or the variance shall lapse.
4. Prior to the issuance of a certificate of occupancy for the multifamily dwelling, and within 120 days from the date of the Order, the applicant shall provide additional landscaping (in accordance with the revised landscape plan). The applicant shall submit photographs, and notify the Department of Planning and Permitting in writing, so that a conformance check can be made.
5. The landscaping shall be maintained in a healthy condition, and shall not be removed.
6. This approval constitutes minor modification of Punchbowl Special District permit No. 95/PB-12.
7. This variance may be revoked by the Director when, due to a material change in circumstances, one or more of the three Charter-required findings of hardship can no longer be made; or when there is a breach of any of the conditions above stated; provided that, for good cause, the Director may amend the above conditions.

Dated at Honolulu, Hawaii, this 8th day of April, 1999.

DEPARTMENT OF PLANNING
AND PERMITTING
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

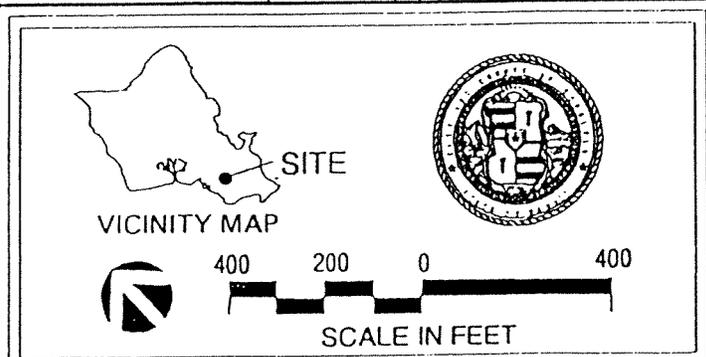
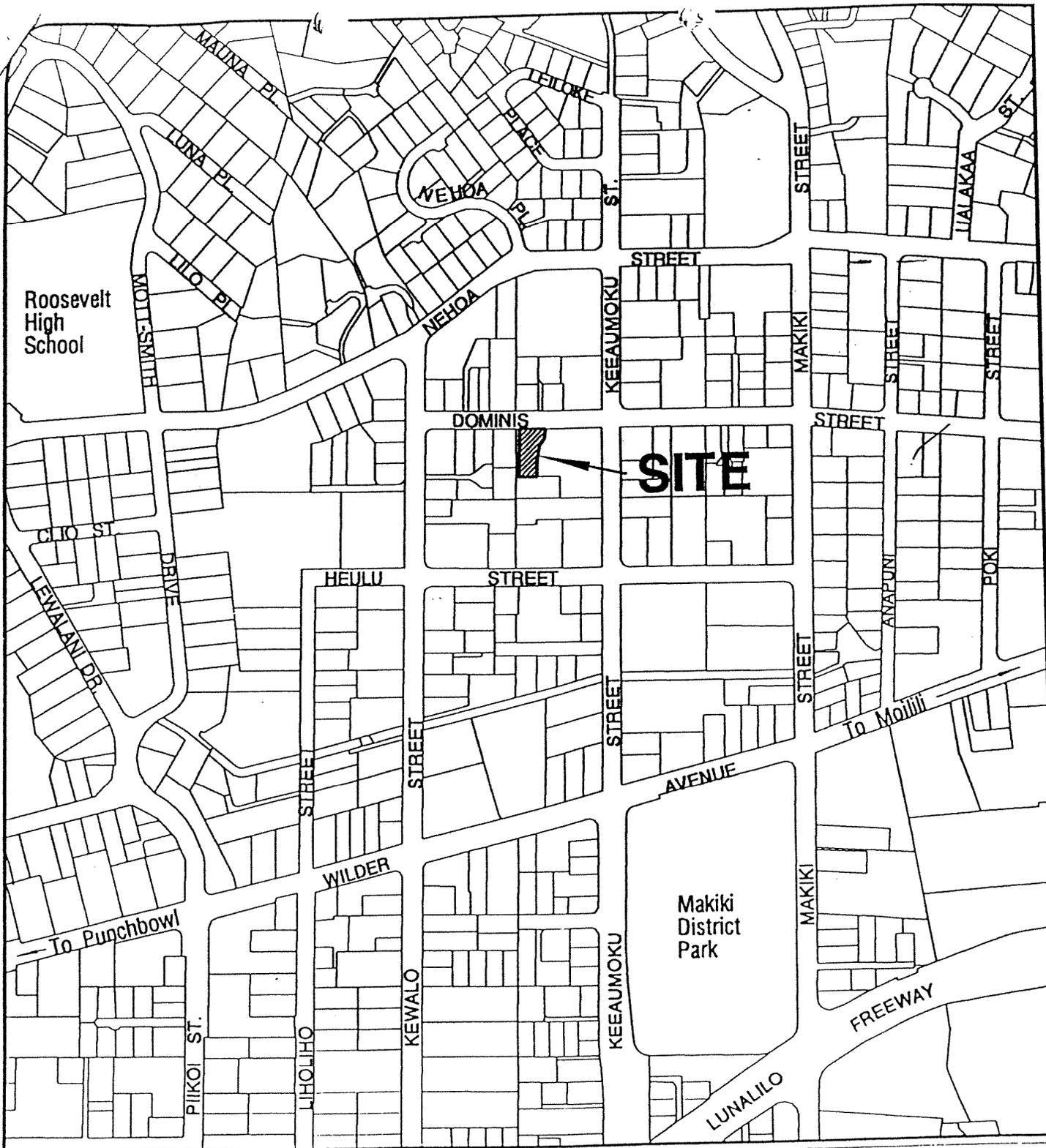
By



JAN NAOE SULLIVAN
Director

Doc. No. 3177

1st Revision



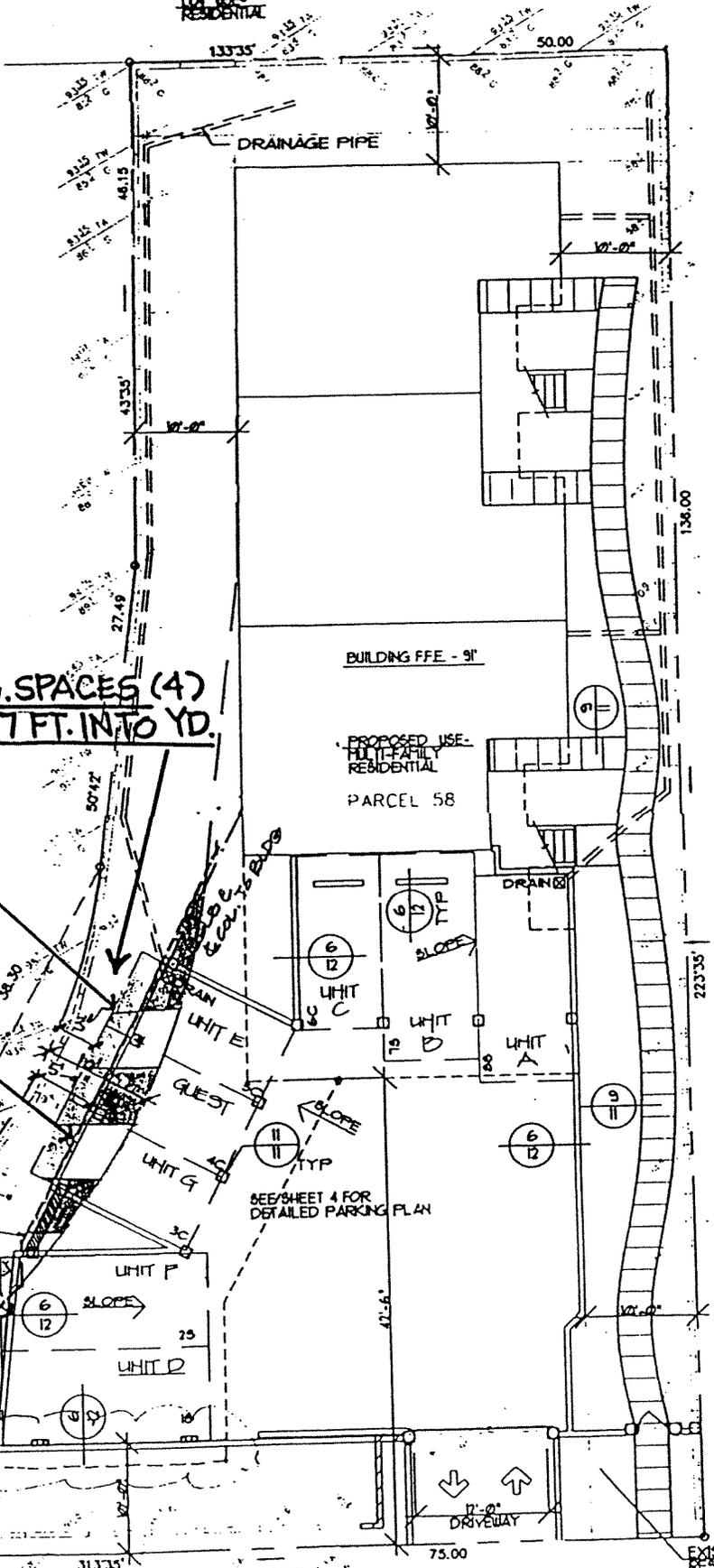
LOCATION MAP

EXHIBIT A

TAX MAP KEY(S): 2-4-25: 58

FOLDER NO.: 97/VAR-22

PARCEL 6:
LOT USE:
RESIDENTIAL



**OFF-ST. PKG. SPACES (4)
ENCR. MAX. 7 FT. INTO YD.**

EDGE OF PAVEMENT

EDGE OF ROOF

EXISTING ROOF LINE ABOVE
(TO BE REMOVED)
NEW ROOF LINE ABOVE

CORB

SEE SHEET 4 FOR
DETAILED PARKING PLAN

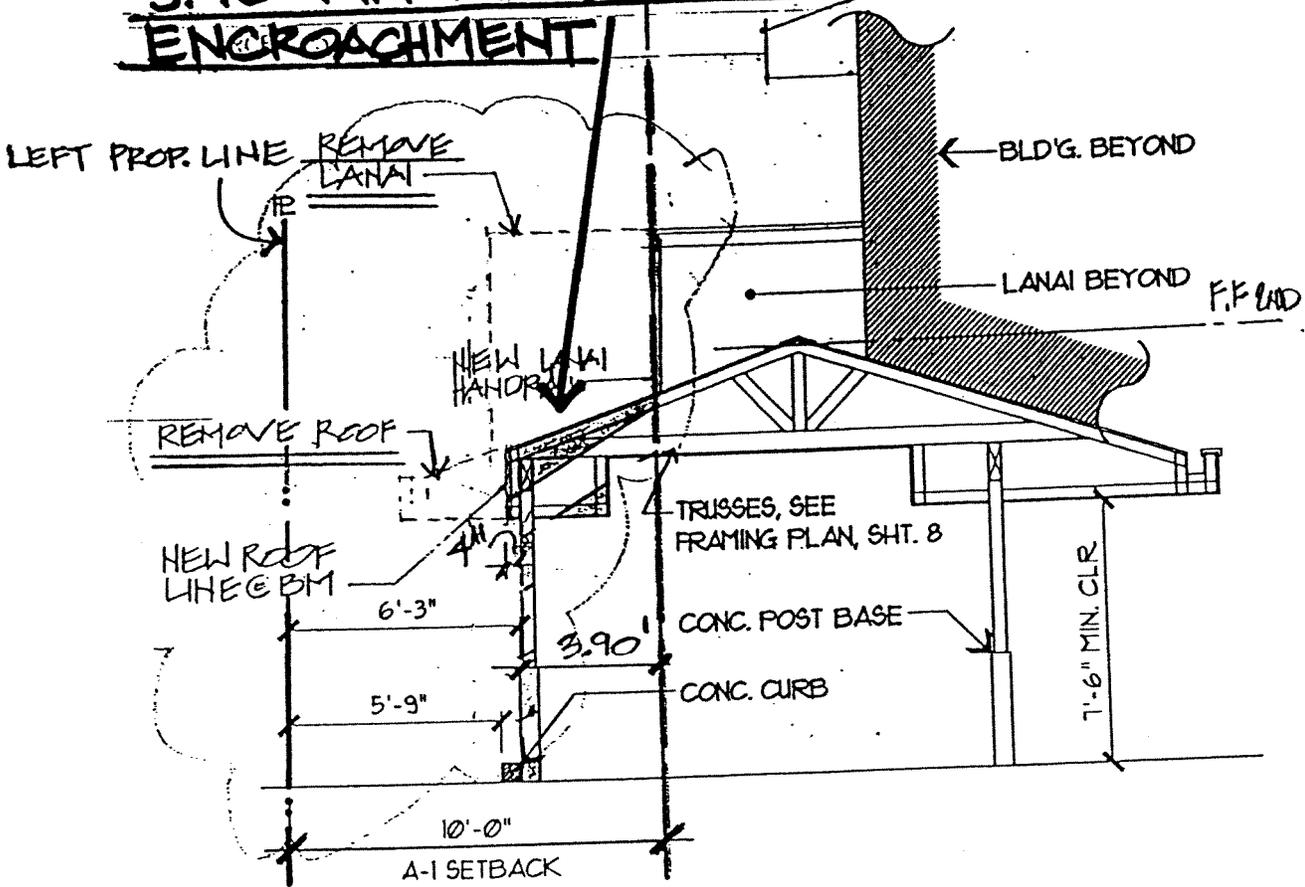
1 PLOT PLAN
SCALE: 1/8" = 1'-0"

BENCHMARK
4" DIA
I.L. - 99.10

DOMINIS
CYRRETT

EX B-1

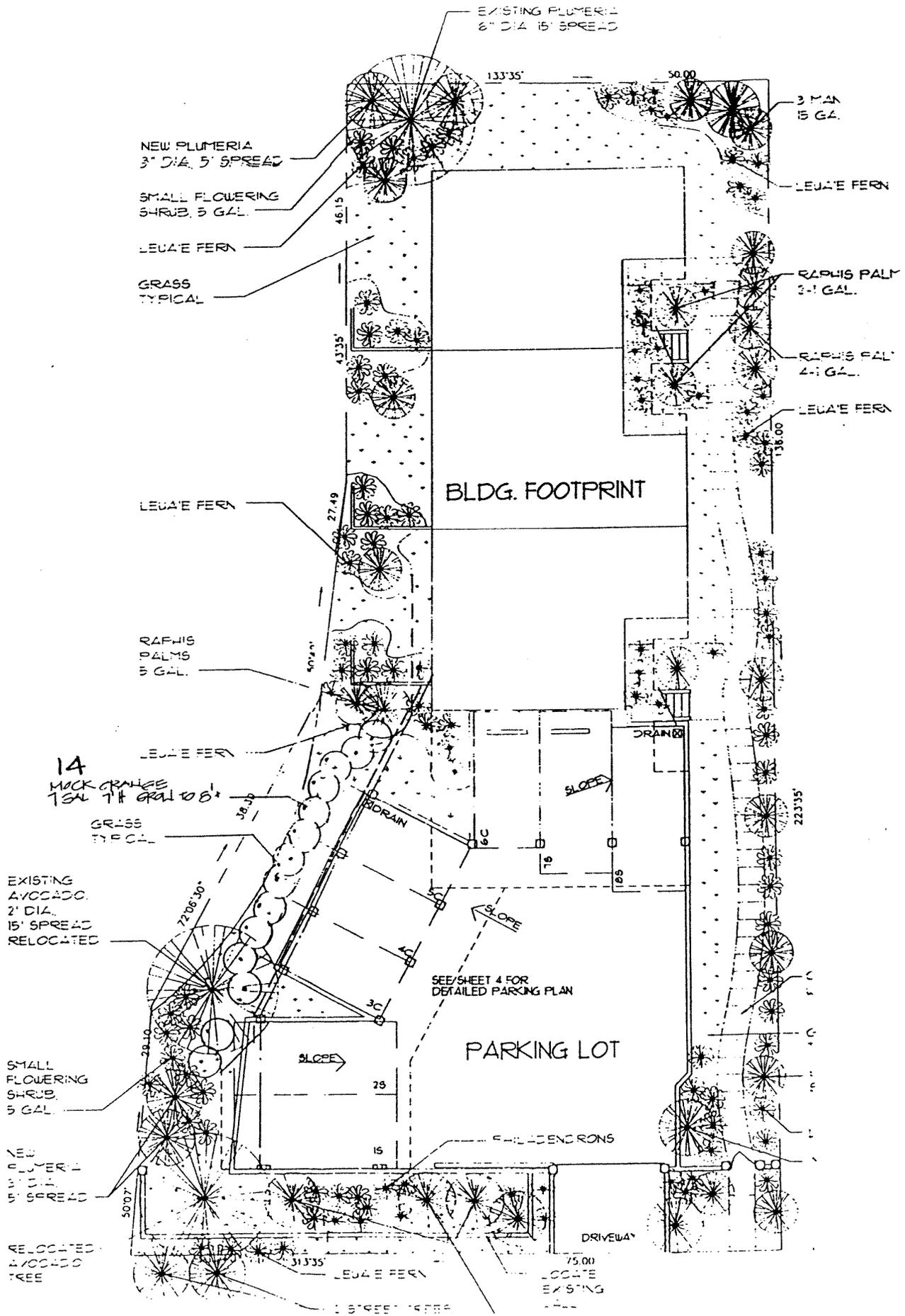
3.90-FT. MAX. CARPORT ENCROACHMENT



3

SECTION @ CARPORT

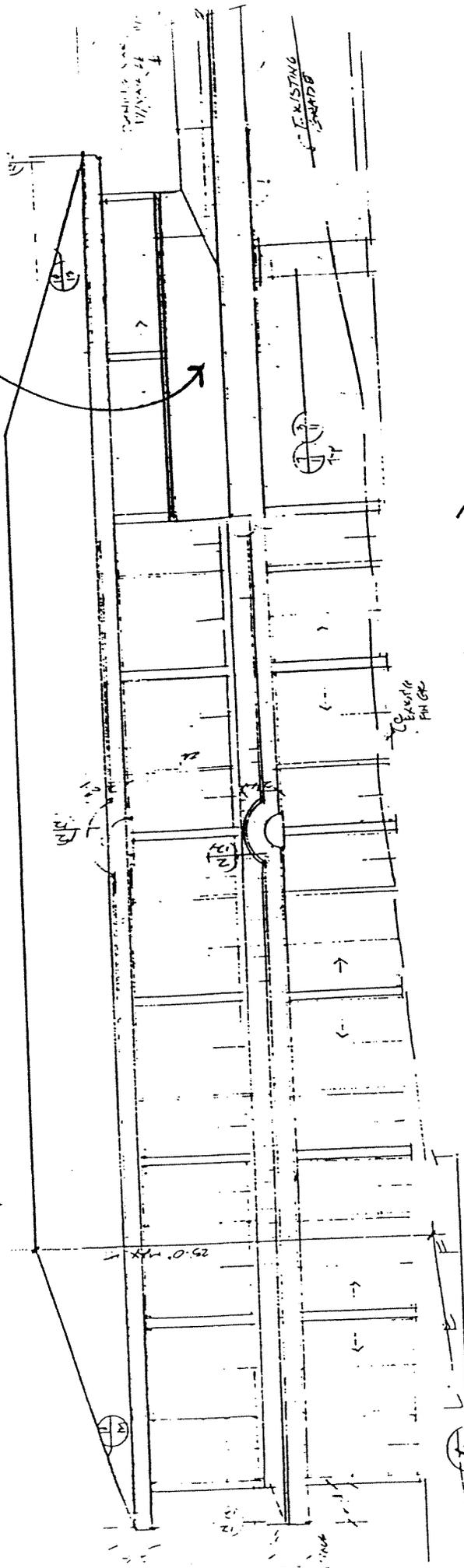
SCALE: 1/4" = 1'-0"



LANDSCAPE PLAN

EXHIBIT B-4

BALCONY



LEFT ELEVATION (PARTIAL)

EXHIBIT B-5