

William P. Kenoi
Mayor



BJ Leithead Todd
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County of Hawai'i
PLANNING DEPARTMENT

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February 17, 2012

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-11-000059
Applicant: KLAUS D. CONVENTZ
DBA BAUMEISTER CONSULTING
Owners: HERMIN GANTALA JR. & AMIE KONDO
Request: Variance from Chapter 25, zoning, Article 5, Division 7, Section 25-5-7, Minimum Yards (A) (2) (A & B), and Article 4, Division 4 Section 25-4-44, Permitted Projections into Yards and Open Space Requirements
TMK: 5-5-009:061

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-059 (VAR 11-059), subject to the following conditions. The variance allows portion of the single story ohana dwelling with carport to remain "AS-BUILT" with a reduced front yard setback of 17.8 feet and reduced side yard setback of 9.5 feet in lieu of the minimum 20.00 feet front yard setback and minimum 10.00 feet side yard setback, as required under Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 (2) (B), Minimum yards, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 15,358 square feet of land, is situated in the Ala Lai Subdivision, Hawi, North Kohala, Hawaii, The subject property's street address is 55-483 Keawe Iki Place.
2. **Zoning.** The subject property is zoned Single Family Residential –15,000 Square Feet (RS-15) by the County and designated Urban or U" by the State Land Use Commission (LUC).

SCANNED

FEB 23 2012

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3. **Variance Application.** The owner submitted the variance application, associated materials, and filing fee on October 14, 2011. The variance application's site plan map is drawn to scale and prepared by Roger D. Fleenor L.P.L.S. The variance site plan or survey map denotes that portions of the ohana dwelling with carport are built into the property's minimum 20-foot wide front yard and 10-foot wide side yard setback.
4. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that original single family dwelling permit was issued in 1988 under Building Permit No. 885630 and the ohana permit was issued in 1989 under Building Permit No. 891464.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated January 18, 2012 identifies no environmental health concerns with regulatory implications. (See memo in VAR file.)
 - b. No comments have been received from Department of Public Works – Building Division as of this date.
6. **Public Notice.** The applicant submitted a copy the first and second notices sent to surrounding property owners including an associated affidavit. Pursuant to these submittals, it appears that the applicant's notices were mailed to the surrounding property owners by USPO on December 9, 2011 and January 23, 2012, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawaii Today on January 24, 2012.
7. **Public Comments.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owner, submitted the variance application to address or resolve the encroachment of the ohana dwelling into the 20 feet front yard and 10 feet side yard setback, as required by the Zoning Code.

Pursuant to the applicant's background information, the single family dwelling was built under Building Permit No. 885630, issued on July 6, 1988 and the ohana dwelling was built under Building Permit 891464, issued on July 24, 1989. The current property owner subsequently purchased the property in 2007. A modern survey was conducted on

November 25, 2011, by Roger D. Fleenor, L.P.L.S. reveals the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the ohana dwelling into the property's minimum 20 feet front yard and 10 feet side yard setback required by the Zoning Code.

ALTERNATIVES

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

Remove the building encroachments and/or redesigning or relocating the as-built single story ohana 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 adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks. This alternative could be cost prohibitive and impractical, in addition to only addressing the side yard setback encroachment.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision or development is to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

Based on the foregoing findings and 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 23 years of existence of the structure. Also, no comments or 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:

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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. The approval of this variance permits the ohana dwelling with carport to remain upon the subject property in accordance to the survey map dated November 25, 2011.
4. Should the improvements constructed upon the subject property be destroyed by fire or other natural causes, the replacement structures shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 11-000059 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Kona Planning
Real Property Tax Office (Kona)
TMK File 5-5-009:061