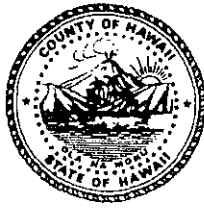


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

December 5, 2012

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-12-000103
Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING
Owners: ROBERT S. AND ELAIN H. BROWN
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-7, Minimum Yards, and Article 4,
Division 4 Section 25-4-44(a), Permitted Projections into
Yards and Open Space Requirements (Encroachment into
Southern Rear Yard Setback)
TMK: 7-3-054:034, Lot 3

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000103 (VAR-12-000103), subject to variance conditions. The variance will allow portion of the single-family dwelling to remain "as built" with a 18.7-foot rear yard setback, in lieu of the required 20-foot rear yard setback, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 10,012 square feet of land, and is situated at Kalaoao 4th, North Kona, Hawai'i. The subject property's street address is 73-1297 Nawahie Loop.
2. **Zoning.** The subject property is zoned Single-Family Residence–10,000 sq. ft. (RS-10) by the County and designated Urban (U) by the State Land Use Commission.
3. **Variance Application-Site Plan.** The applicant submitted the variance application,

attachments, and filing fee on October 9, 2012, 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 Peter H. Souza Jr., LPLS, denotes the portions of the single-family dwelling built into the southern rear yard setback.

4. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (B2006-1548K) was issued on September 15, 2006, for the construction of a 3-bedroom and 2-bath single-family residence and an attached 2-car garage.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated October 22, 2012. (Refer to attached DOH memorandum.)
 - b. No comments have been received from the Department of Public Works as of this date.
6. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice sent to surrounding property owners, including affidavits, stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on October 9, 2012 and October 26, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 24, 2012.
7. **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 allow portions of the single-family dwelling to remain "as built" with an 18.7-foot rear yard setback.

The applicant has stated in its background report that the owners purchased the property on November 30, 2007 and was unaware of any encroachment of the single-family dwelling and would not have discovered any problems affecting the property until a modern survey was conducted by Peter H. Souza, Jr. LPLS, revealing the setback violations. The single-family dwelling rear yard setback encroachment of 1.3 feet (15.6 inches) is considered miniscule and is not visually perceptible from neighboring lots and public view.

ALTERNATIVES

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

Remove the building encroachment constructed upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. This alternative is not reasonable or practicable because it would result in expensive modifications to the single family dwelling.

Consolidate the subject property with adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the location of the encroachments (rear yard), consolidation/resubdivision with the adjoining property would not be practical.*

INTENT AND PURPOSE

The intent and purpose of requiring 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.

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 complaints from surrounding property owners during the roughly 6 years since the single family dwelling was constructed. Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

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

Mr. Klaus Convents
Baumeister Consulting
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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. Portion of the single family dwelling built upon the subject property ("LOT 3") will not meet the minimum rear yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the site map dated August 28, 2012.
5. Should the single-family dwelling (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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-12-000103 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)

Mr. Klaus Convents
Baumeister Consulting
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NEIL ABERCROMBIE
GOVERNOR



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health
PLANNING DEPARTMENT
COUNTY OF HAWAII

2012 OCT 23 AM 9:41

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: October 22, 2012

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000103
Applicant: KLAUS D. CONVENTZ/BAUEISTER CONSULTING
Owner: ROBERT S. AND ELAIN H. BROWN
REQUEST: Variance from Chapter 25, Zoning, Section 25-5-7,
Minimum Yards and Section 25-4-44(a), Permitted
Projections into Yards and Open Space Requirements
(Encroachment into southern rear yard setback)
Tax Map Key: 7-3-054:034, Lot 3

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

WORD:VAR 12-000103.my