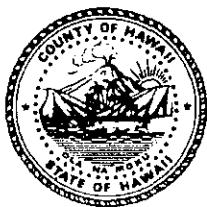


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**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

March 15, 2013

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE APPLICATION – VAR-13-000117**  
**Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: RICHARD TRACY**  
**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**  
**Northeastern Side Yard Setback)**  
**TMK: 7-4-018:040, Lot 111**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 13-000117 (VAR-13-000117), subject to variance conditions. The variance will allow portion of the single-family dwelling to remain “as built” with a northeastern side yard setback of 7.6 feet and attendant, 3-foot open space, in lieu of the required 8-foot side yard setback and a minimum 4-foot open space, 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 7,500 square feet of land, is located in the Kona Chocho Estates Subdivision situated at Kalaoa 4<sup>th</sup>, North Kona, Hawai'i. The subject property's street address is 74-5058 Hua'ala Street.
2. **Zoning.** The subject property is zoned Single-Family Residence–7,500 sq. ft. (RS-7.5) by the County and designated Urban (U) by the State Land Use Commission.
3. **Required Setback.** 15 feet for front and rear; 8 feet for sides.

4. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on January 9, 2013, 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 Wes Thomas Associates (Crystal T. Yamasaki, LPLS), denotes the portions of the two-story, single-family dwelling built into the northeastern side yard setback.

The applicant's variance application was acknowledged by letter dated January 14, 2013 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the Variance Application to March 22, 2013.

5. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (851428) was issued on August 07, 2005, for the construction of a 3-bedroom and 3-1/2 bath single-family residence and an attached 2-car garage.
6. **Agency Comments and Requirements.**
- a. The State Department of Health (DOH) memorandum, dated October 22, 2012. (Refer to attached DOH memorandum.)
  - b. The Department of Public Works Building Division memorandum, dated January 31, 2013. (Refer to attached DPW memorandum)
7. **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 January 8, 2013 and January 22, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 23, 2013.
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.

### **GROUNDNS FOR APPROVING VARIANCE**

#### **Special and Unusual Circumstances**

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.

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Baumeister Consulting  
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The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 8-foot side (northeast) yard setback and a minimum 4-foot open space as required by the Zoning Code.

The survey map prepared by Wes Thomas Associates shows that the northeasterly corner of the single family dwelling encroaches 4.8 inches into the side yard setback which is within the limits allowable under the De Minimis Structure Position Discrepancy requirement. The northeast corner of the deck and stair improvements encroaches 5.5 feet into the 8-foot side yard setback and 1.5 feet into 4-foot side yard open space requirement. The applicant has stated that the owner is proposing to redesign the deck and stair improvements by cutting back the improvements 6 inches to comply with the Building Code which requires that combustible structure elements be separated at least 3 feet (36 inches) from the boundary line. However, the deck and stair improvements will still encroach one foot into the 4-foot side yard open space requirement. Therefore, the owner is requesting a variance to allow a 3-foot side yard open space from the northeast corner and a 3.20 foot side yard open space from the northwest corner of the deck and stair improvements in lieu of the minimum 4-foot side yard open space, as required by the Hawaii County Code.

The structure received final inspection in 1986 and the current owner purchased the property as a repossessed property from a bank in 2010. He was unaware of the encroachment and there is no evidence of malice or intentional violation. To deny the variance would interfere with the best use of existing dwelling on the subject property.

### **Alternatives**

(b) There are no other reasonable alternatives that would resolve the difficulty.

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

Remove the building encroachments and/or redesign or relocate the as-built single-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 of the deck and stairs to meet setback and open space requirement would diminish the functionality of the deck improvements and be impracticable due to the existing layout and design of structure, as well of the lack of space.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical.

### **Intent and Purpose**

- (c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The intent and purpose of requiring building setbacks on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines. The applicant is redesigning a portion of the deck and stair improvements to meet compliance with the Building Code s required by the Department of Public Works. This will bring the dwelling into further conformance with the setback requirements, thereby reducing the encroachment to 1 foot into the required 4-foot open space requirement; leaving a clear space of 3 feet.

Granting of the request would be consistent with the general purpose of the zoning district and the intent 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.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance

### **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 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 111") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the site map dated January 2, 2013.

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5. The owner shall comply with all building regulations that were in effect, in accordance with Department of Public Works memorandum dated January 31, 2013.
6. 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.
7. 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-13-000117 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'S OFFICE  
DEPARTMENT OF HEALTH

2013 FEB -4 AM 8:51



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
Director of Health

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

MEMORANDUM

DATE: February 1, 2013

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

FROM: Newton Inouye ✎  
District Environmental Health Program Chief

SUBJECT: **VARIANCE APPLICATION – VAR-12-000117**  
Applicant: KLAUS D. CONVENTZ  
Owner: RICHARD TRACY  
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 northeast side yard setback)  
Tax Map Key: 7-4-018:040, Lot 111

Wastewater Branch has no objections to the project. However, information on existing wastewater systems are incomplete. The applicant and/or applicant's representative will be responsible to make sure all existing wastewater system(s) meet the minimum setback distances to all proposed new property lines as required per Hawaii Administrative Rules, Chapter 11-62. Violations will be subject to fines and may require up-grades to current requirements.

We recommend that you review all of the Standard Comments on our website:  
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR-12-000117

083387

Mr. Klaus Convents  
Baumeister Consulting  
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**BUILDING DIVISION – DPW**

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2013 FEB -11 PM 2: 54

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-350

1/31/2013

Applicant: Klaus D. Conventz  
Owner: Richard Tracy

SUBJECT: Variance Application –VAR-12-000117


TMK: 7-4-018-040 lot111

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
  - Building
  - Electrical
  - Plumbing
  - Sign
- Others:

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. 323-4721

  
David Yamamoto, Building Chief  
Building Division.

083400