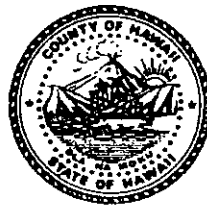


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
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Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

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

June 28, 2013

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-13-000136
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: PHYLLIS RIVERA TRUST
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-7, Minimum Yards (Encroachment
into East Side Yard Setback)
TMK: 7-6-003:032, Lot 2

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000136, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain "as built" with a 9.30 to 9.70 feet side (east) yard setback, in lieu of the required 10-foot side yard setback and a minimum 5-foot open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 14,239 square feet of land, and is situated at Mauka Section of Holualoa 1st and 2nd Partition, North Kona, Hawai'i. The subject property's street address is 76-5819 Mamalahoa Highway.
2. **Zoning.** Single-Family Residence–10,000 sq. ft. (RS-10)
3. **State Land Use.** Urban (U)
4. **Required Setback.** Flag lot - 10 feet side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 29, 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 KKM Surveys (Kevin McMillen, LPLS) denotes the portions of the two-story, single-family dwelling built into the east side yard setback.
6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (07354) was issued on March 6, 1986, for the construction of a 3-bedroom and 2 bath single-family residence and an attached 2-car carport.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated May 10, 2013. (See to attached DOH memorandum.)
 - b. No comments were received from the Department of Public Works–Building Division.
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice sent to surrounding property owners (including affidavits), which were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on April 29, 2013 and May 15, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 27, 2013.
9. **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.

GROUNDS 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.*

The variance application meets criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 10-foot east side yard setback as required by the Zoning Code.

The survey map prepared by Kevin McMillen L.P.L.S shows that portions of the single family dwelling encroaches 0.3 feet to 0.7 feet into the 10-foot side (east) yard setback. The makeshift plastic overhang extension within the east side yard setback will be permanently removed. Once removed, the open space requirement of 5 feet will be met.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed nearly 27 years ago, were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. Further, due to the approximate 0.3 feet and 0.7 feet encroachments into the side yard setback of the property, it appears that this was an error and not intentional.

The above special and unusual circumstance determines the applicant was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the property.

Alternatives

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

The variance application meets criterion (b) for the following reasons:

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

Remove the building encroachments and/or redesign or relocate the 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 single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

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. This would require dismantling the CRM retaining wall. Both of these alternatives are not reasonable and 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's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria (c) for the following reasons:

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.

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 27 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.

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 2") 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 June 27, 2012.

5. The makeshift plastic overhang extension within the eastern side yard setback shall be permanently removed within six months from the granting of this variance. Notification and photos depicting evidence of removal shall be submitted to the Planning Department.
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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000136 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Terry, Dunlap, KCDP
Gilbert Bailado, Planning GIS

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 MAY 14 AM 10:08



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: May 10, 2013

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

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000136
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: PHYLLIS RIVER TRUST
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 the Southern Rear Setback)
Tax Map Key: 7-6-003:032, Lot 2

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