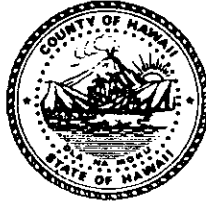


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
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County of Hawai'i PLANNING DEPARTMENT

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October 7, 2013

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-13-000146
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: JACK JEVNE
Request: Variance from Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum Yards and Section 25-4-44(a), Permitted Projections into yards and Open Space Requirements (Encroachment into East Rear Yard Setback and North Side Yard Setback)
TMK: 7-5-022:034, Lot 86-A

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000146 which will amend Variance 159 (VAR 83-000083) approved on November 9, 1983, subject to variance conditions. The variance will allow for a north side yard setback of 3.70 feet and associated 0.40 feet open space and a 12.10-foot east rear yard setback in lieu of the previously approved 4.50 foot north side yard setback and associated 1.00 foot open space, and a 13.00-foot east rear yard setback, which is in lieu of the required 20-foot rear yard setback and associated 14-foot rear yard open space and a 10-foot side yard setback and associated 5-foot side yard 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 7,500 square feet of land, is located in the Lono Kona Subdivision, Makai Increment and is situated at Honualua, North Kona, Hawai'i. The subject property's street address is 75-5757 Kalawa Street.

2. **Zoning.** Multiple-Family Residential – 1,000 square feet (RM-1).
3. **State Land Use.** Urban (U).
4. **Required Setback.** 20 feet for front and rear; for side yards: 8 feet for a one-story building, plus additional 2 feet for each additional story.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on June 21, 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 Kevin McMillen, L.P.L.S (KKM Surveys) denotes the portions of the apartment building built into the east rear yard setback and north side yard setback.

This variance request is address the additional encroachments discovered when a more recent survey was completed on March 18, 2013.

A recent survey map shows that the apartment complex encroaches an additional 0.8 feet into the 10-foot side (north) yard setback and 0.60 feet into the 5-foot side (north) yard open space and 0.90 feet into the 20-foot rear (east) yard setback in addition to those allowed in Variance 159 (VAR-83-000083).

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (49650) was issued on August 3, 1971, for the construction of a 2 story apartment building consisting of 7 units.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated July 10, 2013. (See attached 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 mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on June 21, 2013 and July 8, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 15, 2013.
9. **Time Extension.** The applicant's variance application was received on July 1, 2013 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until October 9, 2013.

10. **Comments from Surrounding Property Owners or Public.**

- a. Objection statement from Dennis & Beth Nemmers received on July 23, 2013.
(see attached)

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 the additional encroachment in the rear and side yard setback. On November 9, 1983, Variance 159 (VAR-83-000083) was granted to allow for 4.50 feet north side yard setback and associated 1.00 feet clear space, and a 13.00 feet east rear yard setback, in lieu of the required 20-foot rear yard setback and associated 14-foot rear yard open space and a 10-foot side yard setback and associated 5-foot side yard open space requirement.

The additional encroachments were discovered when a more modern survey was completed on March 18, 2013.

A recent survey map prepared by Kevin McMillen, L.P.L.S. (KKM Surveys) shows that the apartment complex encroaches an additional 0.8 feet into the 10-foot side (northern) yard setback and 0.60 feet into the 5-foot side (northern) yard open space and 0.90 feet into the 20-foot rear (eastern) yard setback.

The variance request is to legitimize the additional encroachments discovered when a more recent survey was completed on March 18, 2013. The additional encroachments discovered could be attributed to more sophisticated and precise survey equipment used today than those used 30 years ago when the original survey was done.

Based on the above mentioned information, special and unusual circumstances exist to justify the granting of this variance.

- (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 two-story apartment building 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 apartment complex to meet setback requirement would leave unattractive reconstruction scars.

The storage sheds and deck have been removed from the rear yard setback (see attached photo for visual reference).

Because the encroachment is within the rear yard and side yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum rear and side yard setbacks are not viable option, therefore, there are no reasonable alternatives to resolve the encroachment issue.

- (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.

A letter of objection was received from Dennis & Beth Nemmers stating that they are not in favor of granting the variance. An original variance was approved on November 9, 1983. This variance request is strictly to legitimize the additional encroachments discovered when a more recent survey was completed on March 18, 2013.

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 intent and purpose 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 40 years since the single-family dwelling and attached garage were constructed.

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 enclosed garage built upon the subject property ("LOT 86A") 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 March 21, 2013.
5. This variance does not apply to the encroachment issue regarding the wire and bamboo fence. These issues shall be addressed by the property owners affected by the wire and bamboo fence encroachments.
6. Any encroachment into the Kalawa Street right-of-way shall be removed or relocated out of the road right-of-way.
7. Should the two-story apartment complex (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.
8. 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.

Klaus D. Conventz
Baumeister Consulting
Page 6
October 7, 2013

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000146 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

Klaus D. Conventz
Baumeister Consulting
Page 7
October 7, 2013

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 JUL 11 AM 9:44



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: July 10, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000146
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: JACK JEVNE
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7 Minimum yards and Section 25-4-44(a),
Permitted Projections into Yards and Open Space
Requirements (Encroachment into the Eastern Rear yard
Setback)
Tax Map Key: 7-5-022:034, Lot 86A

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.