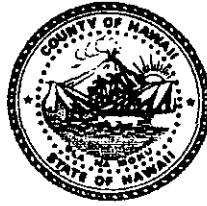


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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

December 12, 2013

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE APPLICATION – VAR-13-000156 (Amended)**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: GEORGE J. & SHARON J. HINDGIS LIVING TRUST**  
**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 East Front Yard Setback and Southwest Side yard Setback)**  
**TMK: 7-8-012:037, Lot 2**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000156 (Amended), subject to variance conditions. The variance will allow portion of the single-story guest house to remain "as built" with a 6.8-foot side (west) yard setback and the associated roof eave with a 1.8-foot side yard open space. It also allows for two storage sheds to be approved under Section 25-4-66, the De Minimis Regulation Structural Position Discrepancy and to remain "as built" with a 9.8-foot and a 9.6-foot side (west) yard setback. These exceptions are in lieu of the required 10-foot side yard setback with 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 1.562 acres of land, is situated at Keauhou 1<sup>st</sup>, North Kona, Hawai'i. The subject property's street address is 78-120 Holua Road.
2. **Zoning.** Single-Family Residence–10,000 sq. ft. (RS-10).

Section 25-5-8. Other regulations. (a) There may be more than one single-family dwelling on each building site in an RS district, provided there is not less than the required minimum building site area for each dwelling.

3. **State Land Use.** Urban (U).
4. **Required Setback.** 20 feet for front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 24, 2013, and other submittals related to the variance request and variance application. The variance application's site plan map, drawn to scale and prepared by Chrystal Thomas Yamasaki, L.P.L.S., Wes Thomas Associates, denotes the portions of the single-story guest house built into the west side yard setback.

The survey map shows that portions of the single-story guest house encroaches 3.2 feet and into the 10-foot side (west) yard setback and the associated roof eave encroaches 3.2 into the side (west) yard open space. Also, the two sheds encroaches 0.20 feet and 0.40 feet into the side (west) yard setback.

The owners were unaware of any encroachments until an "as built" survey was conducted by Wes Thomas Associates on June 11, 2013, revealing the violation.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that the guest house was built under building permit 35878, issued on May 5, 1967. Building permit B14252 was issued on September 30, 1953 for the construction of a single-family dwelling consisting of 3 bedrooms and 2 baths. Additional building permits were issued on June 30, 1953 (B21890) and on May 5, 1967 (35877) for addition and alterations.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated August 9, 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 July 24, 2013 and August 10, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 13, 2013.

9. **Time Extension.** The applicant's variance application was received on July 24, 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.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

### 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 or resolve the encroachment of the single-story guest house into the 10-foot side (west) yard setback as required by the Zoning Code.

The survey map prepared by Chrystal T. Yamasaki L.P.L.S., of Wes Thomas Associates shows that portions of the single-story guest house encroaches 3.2 feet into the 10-foot side (west) yard setback and the associated roof eave encroaches 3.2 into the side (west) yard open space. Also, there are two sheds that encroaches 0.20 feet (2.4 inches) and 0.40 feet (4.8 inches) into the side (west) yard setback.

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 46 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. It appears that the encroachments could be attributed to staking errors and were not intentional.

The two storage sheds encroach 0.20 feet (2.4 inches) and 0.40 feet (4.8 inches) into the 10-foot side (west) yard setback qualifies under the "De Minimis" regulations of the Zoning Code.

The above special and unusual circumstances determine the owner 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.

***(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 west side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-story guest house 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.

Because the encroachment is within the 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 side yard setbacks are not viable options, 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.

The encroachment of 3.2 feet into the side (west) yard setback and the associated roof eave 3.2 feet into the side (west) yard open space area still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage. The two storage sheds encroaches 0.20 feet (2.4 inches) 0.40 feet (4.8 inches) into the side (west) yard setback meet the requirements to be approved under the De Minimis Structure Position Discrepancy.

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 46 years since the single-story guest house 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. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
4. Portion of the single-story guest house and two sheds 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 11, 2013.
5. This variance does not apply to the encroachment issue regarding the concrete rock masonry (CRM) wall. These issues shall be addressed by the property owners affected by the CRM wall encroachments.

Klaus D. Conventz  
Baumeister Consulting  
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6. Should the single-story guest house along with the two sheds (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-13-000156 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  
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NEIL ABERCROMBIE  
GOVERNOR

PLANNING DEPARTMENT  
COUNTY OF HAWAII



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

2013 AUG 12 PM 12: 29

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 918  
HILO, HAWAII 96721-0918

MEMORANDUM

DATE: August 9, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: <sup>et</sup>Newton Inouye *QA*  
District Environmental Health Program Chief

SUBJECT: Application: Variance- VAR 13-000156  
Applicant: Klaus D. Conventz/Baumeister Consulting  
Owner: George J. & Sharon J. Handgis Living Trust  
Request: Variance from CH25, 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 West Side Yard Setback.)  
TMK: 7-8-012-037, Lot 2

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

WORD: VAR 13-000157 eh.

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