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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 20, 2014

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

Dear Mr. Conventz:

SUBJECT: Application: VARIANCE – VAR-13-000160
Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING
Owners: DAVID T. DOI TRUSTEE FOR NELSON K. DOI TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 5
Section 25-5-56, Minimum Yards and Article 4,
Division 4, Section 25-4-44(a), Permitted Projections Into
yards and Open Space Requirements (Encroachment into
Northwest Front Yard Setback)
TMK: 6-4-001:140, Lot B-1

The Planning Director certifies the **approval** of VAR: 13-000160, subject to conditions. The variance is to allow for the single-family dwelling to remain on Lot B-1 with a minimum 28.7 feet front (northwest) yard setback and associated roof eave with a 27.5 front (northwest) yard open space requirement in lieu of the minimum required 45-foot front yard setback (25 foot front yard setback + 20-foot road and utility easement) and associated 39-foot front yard open space requirements measured from the property's northwest front boundary line and according to the submitted site plan. The variance is from the subject property's minimum 25-foot front yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 22,299 square feet of land and is situated at Puukapu, Waimea, Hawai'i. The street address is 68-1861 Ua Noe Street.
2. **County Zoning.** Residential and Agricultural - .5 (RA-.5a)

3. **State Land Use.** Rural.
4. **Setback Requirements.** 25 feet for front and rear; 15 feet for sides.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on August 8, 2013 and other submittals related to the variance request and application. The variance application's site plan map is drawn to scale and prepared by Chrystal Thomas Yamasaki, LPLS. The variance plot plan denotes that portion of the single-family dwelling is built into the property's minimum 25-foot wide front yard setback.

The survey map prepared by Chrystal Thomas Yamasaki, L.P.L.S., dated March 1, 2012 shows that the single-family dwelling encroaches 28.7 feet into the 45-foot front (northwest) yard setback and the associated roof eave encroaches 27.5 feet into the front (northwest) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#B2004-0241K), was issued on February 26, 2007 for the construction of a 3 bedroom, 2-1/2 bath Single-Family Dwelling.
7. **Time Extension.** The applicant's variance application was received on August 8, 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 June 20, 2014.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated September 9, 2013.
(See attached)
 - b. No comments were received from the Department of Public Works – Building Division.
9. **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 notices were mailed on August 8, 2013, and the second notices were mailed on August 27, 2013. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 27, 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 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 45-foot front (northwest) yard setback and 39-foot front yard open space as required by the Zoning Code.

The survey map prepared by Chrystal Thomas Yamasaki, L.P.L.S. dated March 1, 2012 shows that single-family dwelling encroaches 16.3 feet into the 45-foot front (northwest) yard setback and the associated roof eave encroaches 11.5 feet into the front (northwest) yard open space.

The applicant, in his background report regarding Special and Unusual Circumstances has, stated:

“The dwelling was built under Building permit No. B2007-0241K, issued February 26, 2007, by predecessor owners David A. and Kathleen Scott.

The investigation and survey, conducted on March 01, 2012 by Wes Thomas Associates, revealed an encroachment into a recorded access and utility easement in favor of various properties within and outside the subdivision.

For all practical purposes and reasons, the easement is no longer required and Lots A-1 and A-2 released the rights over this Easement. Owner understands that Lots f-4 and B-2 also released their rights over this easement. All of these lots had actually a bona fide purpose for the use of such easement at some time.

However, the owner of Lot G-2 did not release her rights over this easement right, although there in no valid reason not to do so. Lot G-2 is located in front of subject property, the adjoining southerly neighbor, and an access and utility easement for Lot G-2 are already secured, without the use for such additional easement of subject property.”

Majority of the property owners have released their rights over the easement, however the owner of Lot G-2 has not released her rights over the subject easement (Easement 1). As mentioned earlier, Lot G-2 is located in the front of the subject property, therefore, access to

Lot G-2 will not be affected even with the extinguishment of the roadway and utility easement (Easement 1). Since the owner of G-2 did not release her rights over the road and utility easement, the question still remains as to whether the roadway and utility easement over the subject property are still in effect or extinguished. Because this issue regarding the roadway and utility easement still remains, the owner decided to pursue a setback variance to legitimize the encroachment of the single-family dwelling into the front yard setback.

The owner was unaware of any encroachment when he purchased the property and would not have discovered any problems affecting the single-family dwelling additions until an as-built survey, which was completed on July 27, 2013 by Chrystal Yamasaki Thomas, LP.L.S., revealed the encroachment.

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 10 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.

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 rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the covered lanai 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 rear property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

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 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.

Therefore, the variance would be consistent with the with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

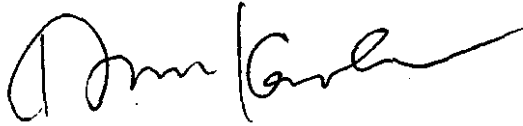
Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT B-1") does not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code). This variance request is **approved** subject to the following conditions.

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 farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may change from time to time.
4. 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 13-000160 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha", written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci

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xc: Kona Office
Real Property Tax Office (Kona)
Planning GIS, Gilbert Bailado (via email)

NEIL ABERCROMBIE
PLANNING DIRECTOR
COUNTY OF HAWAII

2013 SEP 13 AM 10:05



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: September 9, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000160
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Permitted Projections into Yards and Open Space
Requirements (Encroachment into the West Front Yard
Setback)
Tax Map Key: 6-4-001:140, Lot 2

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.

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