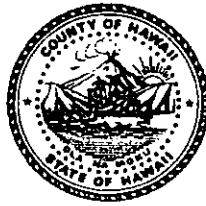


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
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**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

January 24, 2014

Mr. Klaus D. Conventz  
Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, HI 96740

Dear Mr. Conventz:

**SUBJECT: Application: VARIANCE – VAR-13-000169**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: AARON N. IKEDA AND CAROL S. IKEDA,**  
**TRUSTEES FOR THE IKEDA TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1,**  
**Section 25-5-7 Minimum Yards, Section 25-4-44, Permitted**  
**Projections into Yards and Open Space Requirements**  
**(Encroachment into the North Front Yard Setback and**  
**West Side Yard Setback)**  
**TMK: 8-1-022:010; (Lot10)**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000169, subject to variance conditions. The variance will allow the existing two-story single-family dwelling to remain on the subject property with a 4.85 to 6.70 foot side (west) yard setback and 0.35 to 3.75 foot side (west) yard open space, and a 9.25 foot front (north) yard open space. This allowance is in lieu of the minimum 10-foot front yard open space requirement and 8-foot side yard setback with associated 4-foot side yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards, (2) (A) and Article 4, Division 4, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

- 1. Location.** The subject property consists of approximately 8,088 square feet of land and is located in the Kona Scenic Subdivision, Unit 1, at Haleki'i, South Kona, Hawai'i. The subject property's street address is 81-910 Nape Street.

2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).

3. **State Land Use.** Urban.

4. **Setback Requirements:** 15 feet for front and rear; 8 feet sides.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on September 4, 2013. The variance application's site plan map is drawn to scale and was prepared by Thomas G. Pattison L.P.L.S., Pattison Land Surveying, Inc. and denotes the positions of the two-story single-family dwelling into the north front yard open space and west side yard setback and open space. The site has an unusual topography with a rock pali to the east along the boundary with the adjacent lot.

The survey map shows that portions of the two-story dwelling encroaches 0.75 feet into the front (north) yard open space and a minimum of 1.3 feet to a minimum of 3.15 into the 8-foot side (west) yard setback and the associated roof eave encroaches 0.25 feet to 3.65 feet into the side (west) yard open space.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (3703) was issued on July 2, 1979, for the construction of a 3-bedroom and 2-1/5-bath, two-story single-family dwelling.

7. **Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated September 26, 2013. (See attached)
- b. No comments have been received from Department of Public Works – Building Division as of this date.

8. **Public Notice.** 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 September 4, 2013 and September 19, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 22, 2013.

9. **Time Extension.** The applicant's original variance application was received on September 12, 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 January 24, 2014.

**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.

### 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 two-story single-family dwelling into the 8-foot side (west) yard setback, 4-foot side (west) yard open space and the 10-foot front (north) yard open space as required by the Zoning Code.

The survey map prepared by Thomas G Pattison, L.P.L.S., of Pattison Land Surveying, Inc., shows that portions of the two-story dwelling encroaches 0.75 feet into the front (north) yard open space and a minimum of 1.3 feet to a minimum of 3.15 into the 8-foot side (west) yard setback and the associated roof eave encroaches 0.25 feet to 3.65 feet into the side (west) yard open space. Photos show the unusual topography with a pali along the east property boundary.

Originally, the subject dwelling encroached onto Lot 11 to the west. The applicant stated that:

*“The County of Hawai‘i, building division’s plan checker and senior inspector, Ray, was made aware of the problem, had a meeting with Aaron Ikeda and required him to cut the encroachments onto Lot 11 but to the property line as a minimum, obviously after discussion with the Planning Department. A correction of two weeks was given to the owner to correct the violation”.*

It should be noted that after the owner corrected the structural encroachment as directed, they received all inspections and approvals, including subsequent additions and remodel under Building permits Nos. 06021, issued September 16, 1983 and 915648, issued on May 30, 1991. The result of this correction based on the fact that the County Building Code required a setback of 2 feet.

Therefore, along with the unusual topography of the subject property and the placement of the existing structure, special and unusual circumstances exist on the subject property which would interfere with highest and best use of the subject 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 side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the two-story single-family 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 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 other reasonable alternatives to resolve these encroachment issues.

### **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 variance application meets criterion (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.

The applicant has stated that because of the unusual height and position of the subject's dwelling, it should not obstruct or prevent adequate air circulation and exposure to light 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 complaint from surrounding property owners during the past 34 years of existence of the two-story single-family dwelling.

Further, objections were not received from the adjacent owner, 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 application is approved subject to the following variance 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 Hawai'i 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 related to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code's minimum side yard setback and front and side yard open space requirement. The approval of this variance allows the existing single-family dwelling to remain on the subject property, pursuant to the variance application's site plan map.
4. 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 be changed from time to time.
5. The existing single-family dwelling situated on the subject property will not meet the minimum side yard setback and front and side yard open space requirement pursuant to Chapter 25, the Zoning Code. The approval will allow the existing single-family

Klaus D. Conventz  
Baumeister Consulting  
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dwelling to remain on the subject property in accordance with the revised survey map dated on August 26, 2013.

6. This variance does not apply to the encroachment issue regarding the concrete rock masonry (CRM) retaining wall. These issues shall be addressed by the property owners affected by the CRM retaining wall encroachments.
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 13-000169 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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

Klaus D. Conventz  
Baumeister Consulting  
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January 24, 2014

NEIL ABERCROMBIE  
GOVERNOR

PLANNING DEPARTMENT

2013 SEP 27 AM 11:05



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 26, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000169  
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING  
Owner: AARON N. IKEDA AND CAROL S. IKEDA,  
TRUSTEES FOR THE IKEDA TRUST  
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 North Front Yard  
Setback and West Side Setback)  
Tax Map Key: 8-1-022:010, Lot 10

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

087783

WORD: VAR 13-000169