

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i PLANNING DEPARTMENT

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101 Pauahi Street, Suite 3
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January 13, 2014

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

Dear Mr. Conventz:

SUBJECT: Application: VARIANCE – VAR-13-000179
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: B.P. BISHOP ESTATE
Lessee: ERIKA FLUYT TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, 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)
TMK: 7-8-016:025, Lot 15

The Planning Director certifies the **approval** of VAR-13-000179, subject to variance conditions. The variance will allow a section of the two-car garage to remain "as built" with a front (east) yard setback of 22.49 feet to 25.74 feet and associated 19.30 feet to 23.35 feet front (east) yard open space. These exceptions are in lieu of the required 30-foot front yard setback with associated 24-foot front yard open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 6.20 acres of land, is located in Keauhou – Kahalu'u Farm Lots Subdivision, situated in Keauhou 1 and Kahalu'u, North Kona, Hawai'i. The subject property's street address is 78-6698 Road 2.
2. **Zoning.** Agricultural – 5 Acres (A-5a).

3. **State Land Use.** Agricultural.
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on November 18, 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 Thomas G. Pattison, L.P.L.S., of Pattison Land Surveying, Inc. denotes the portions of the two-car garage built into the front (east) yard setback.

The survey map shows that sections of the detached two car garage encroaches 4.26 feet to 7.51 into the 30-foot front (east) yard setback and the associated roof eave encroaches 0.65 feet to 4.7 feet into the front (east) yard open space, leaving a clear space of approximately 19.3 feet to 23.35 feet. It also reveals an unpermitted lean-to shed entirely into the north side yard setback and side yard open space.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (20042) was issued on February 2, 1958, for the construction of a 2-bedroom and 1-bath single-family dwelling. Additional building permits were issued for alterations and additions to the single-family dwelling. However there are no records of any building permits issued for the two-car garage.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated December 18, 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 November 21, 2013 and December 6, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 10, 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.

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 "as-built" two-car garage into the 30-foot front (east) yard setback and 24-foot front (east) 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 sections of the detached two car garage encroaches 4.26 feet to 7.51 into the 30-foot front (east) yard setback and the associated roof eave encroaches 0.65 feet to 4.7 feet into the front (east) yard open space. Also, the lean-to shed that encroaches entirely into the north side yard setback will be permanently removed.

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 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 east 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 front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front 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 4.26 feet to 7.51 feet into the front (east) yard setback and the associated roof eave of 0.65 feet to 4.7 feet into the front (east) yard open space area still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

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 36 years since the two-car garage 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. A section of the "as-built" two-car garage on the subject property ("LOT 15") does not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the site map dated October 25, 2013. The owner shall provide evidence that the two-car garage is legally permitted or secure a building permit to legitimize the two-car garage within six months of the issuance of this variance.
5. Should the two-car garage (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.
6. The lean-to shed within the north side yard 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
7. 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.
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.

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000179 null and void.

Sincerely,

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

DUANE KANUHA
Planning Director

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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

2013 DEC 17 AM 8:48



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

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

MEMORANDUM

DATE: December 18, 2013

TO: Duane Kahuna
Planning Director, County of Hawaii

FROM: *for* Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: Application: Variance- VAR 13-000179
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Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

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.