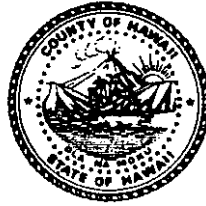


William P. Kenoi
Mayor



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

January 20, 2014

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-13-000180
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: BRENDAN M. & KRISTIN L. POFF
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 West Side Yard Setback)
TMK: 7-3-028:097, Lot 16

The Planning Director certifies the approval of VAR-13-000180, subject to variance conditions. The variance will allow portion of the single-family dwelling with lanai to remain "as built" with a side (west) yard setback of 5.79 feet to 5.98 feet and associated roof eave with a 4.37 feet to 4.64 feet side (west) 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 and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 6.20 acres of land, is located in the Kukuinui, Increment 1, Subdivision and situated at Kalaoa 4th, North Kona, Hawai'i. The subject property's street address is 73-989 Kukuinui Street.
2. **Zoning.** Single-Family Residential – 15,000 square feet (RS-15).
3. **State Land Use.** Urban.

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 November 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 Thomas G. Pattison, L.P.L.S., Pattison Land Surveying, Inc., denotes the portions of the single-family dwelling built into the west side yard setback.

The survey map shows that portions of the single-family dwelling encroaches 4.02 feet to 4.21 feet into the 10-foot side (west) yard setback and the associated roof eave encroaches 0.36 feet to 0.63 feet into the side (west) yard open space.
6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (B2005-1330K) was issued on August 17, 2005, for the construction of a 3-bedroom and 2-bath single-family dwelling.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated December 05, 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 18, 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 single-family dwelling into the 10-foot side (west) yard setback and 5-foot side (west) 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 single-family dwelling encroaches 4.02 feet to 4.21 feet into the 10-foot side (west) yard setback and the associated roof eave encroaches 0.36 feet to 0.63 feet into the side (west) yard open space.

The applicant has stated "*The Poff property grade level is in excess of 15 feet above the westerly neighbor's property grade elevation, separated at the boundary by a massive vertical concrete retaining wall, which in turn is at its top secured only by a hedge and fence*". Therefore, by enclosing the lanai it provided for a safe and secure play area for their children.

It was discovered that although predecessor's contractor had established side yard setbacks, eaves were overlooked. The error is miniscule although exceeding the code requirement. The vertical wall between the neighbors provides viable separation.

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 enclosed 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 enclosed lanai 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 applicant has stated that the subject's dwelling floor elevation is several feet higher than the neighbor's roof gutters. Therefore, 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 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 9 years since the single-family dwelling was constructed. Further, objections were not received from the adjacent neighbor, 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:

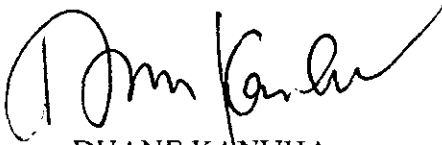
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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.

Klaus D. Conventz
Baumeister Consulting
Page 5
January 20, 2014

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. The enclosed lanai built upon the subject property ("LOT 16") 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 November 5, 2013.
5. Should the enclosed lanai attached to the single-family dwelling 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. 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-13-000180 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR13-000180TMK7-3-028-097Poff.doc.rtf

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

Klaus D. Conventz
Baumeister Consulting
Page 6
January 20, 2014

NEIL ABERCROMBIE
GOVERNOR



LORETTA J. FLIDDY, A.C.S.W., M.P.H.
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 DEC -6 PM 12: 20

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

MEMORANDUM

DATE: December 5, 2013

TO: Duane Kahuna
Planning Director, County of Hawaii

FROM: Newton Inouye *rd*
District Environmental Health Program Chief

SUBJECT: Application: Variance - VAR 13-000180
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: BRENDAN & KRISTIN POFF
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 West Side Yard
Setback)
Tax Map Key: 7-3-028:097, Lot 16

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