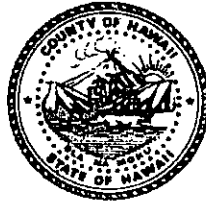


William P. Kenoi
Mayor



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

April 25, 2014

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-14-000190
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: JAMES MILTON DAY, JR AND
JENNIFER ELLEN DEMOS-DAY
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 the
Southeast and Southwest Side Yard Open Space)
TMK: 7-5-016:072, Lot 3

The Planning Director certifies the approval of VAR-14-000190, subject to variance conditions. The variance will allow portions of an existing detached multi-car carport to remain with a side (southeast and southwest) yard open space of 12.53 feet to 13.30 feet. These exceptions are in lieu of the required 14-foot side 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 1.851 acres of land, is located in the Nani Hale Aina Subdivision and is situated at Waiaha, 2nd District, North Kona, Hawai'i. The subject property's street address is 75-656 Makalauna Place.
2. **Zoning.** Agricultural – 1 acre (A-1a).
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 January 28, 2014, 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.), and denotes the portions of the multi-car carport built into the side (south) yard open space. The multi-car carport holds three automobiles.

The survey map shows that the multi-car carport roof eave encroaches 0.70 feet (8.4 inches) to 1.47 feet (17.4 inches) into the 14-foot side (southeast and southwest) yard open space.
6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (025300) was issued on March 12, 2002, for the construction of a 4-bedroom and 3-½ -bath single-family dwelling. A subsequent building permit (B2007-0990K) was issued on July 6, 2007 for the subject multi-car carport.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated March 07, 2014.
(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 January 28, 2014 and February 7, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 12, 2014.
9. **Time Extension.** The applicant's variance application was received on January 28, 2014 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 April 30, 2014.
10. **Comments from Surrounding Property Owners or Public.** An objection letter from David J. and Susan M. Aulik was received on February 20, 2014.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

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Baumeister Consulting
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(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 detached multi-car carport into the 14-foot side (south) 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 multi-car carport roof eaves encroaches 0.70 feet (8.4 inches) to 1.47 feet (17.64 inches) into the 14-foot side (south) yard open space.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. The error is miniscule although exceeding the code requirement.

It appears that the multi-car carport constructed nearly 7 years ago was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the multi-car carport did not disclose any building encroachment issues or building setback irregularities at that time.

It should be noted that the segment of the multi-car carport that encroaches 0.70 feet (8.4 inches) into the 20 –foot south side yard open space 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 south side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the open Multi-car carport

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 open multi-car carport to meet setback requirement would leave unattractive reconstruction scars. Further due to the size and structural design of the carport, relocating the carport wouldn't be practical.

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 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.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The multi-car carport is open on sides and the roof eave encroachment ranges from 0.70 feet (8.4 inches) to 1.47 feet (17.64 inches). Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property lines.

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. The detached multi-car carport has been in existence for approximately 7 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such; it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

An objection letter was received on February 20, 2014 from David and Susan Aulick stating that they object to an allowance to a structure that has been the source of a visual and noise nuisance to them since it was built. The problem has been exacerbated in the last several years because the property has been used as a high-end vacation rental, not a single-family

dwelling as represented, advertised to sleep up to ten. The Planning Department has no guidelines or regulations governing short-term vacation rentals. Also, the Planning Department does not regulate noise; the sole purpose of this variance is to allow for the multi-car carport to encroach 0.70 feet (8.4 inches) to 1.47 feet (17.64 inches) into the side (south) yard open space requirement.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, multi-car carport built upon the subject property ("LOT 3") will not meet the minimum side yard open space 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. 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. Should the detached multi-car carport 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.
5. This variance does not apply to the encroachment of the metal gate onto the private roadway lot. This encroachment issue shall be dealt with the between the owners of the roadway lot and the subject property owners.
6. Future or new building improvements and permitted uses shall be subject to State law

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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-14-000190 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: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS

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Baumeister Consulting
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NEIL ABERCROMBIE
GOVERNOR'S OFFICE

2014 MAR 10 PM 2:10



DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: March 7, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR-14-000190
Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING
Owner: JAMES MILTON DAY, JR. & JENNIFER ELLEN
DEMOS-DAY
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into South Side Yard
Setback)
Tax Map Key: 7-5-016:072, Lot 3

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