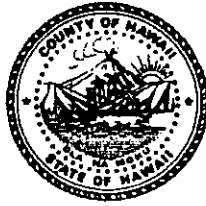


William P. Kenoi
Mayor



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
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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

April 25, 2014

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-14-000193
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: HANNE JERNSTROM TRUST, NILS JERNSTROM,
TRUSTEE
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 the North Side Yard
Setback)
TMK: 7-7-019:015; Lot 15

The Planning Director certifies the **approval** of VAR-14-000193, subject to variance conditions. The variance will allow portions of the two-car garage to remain "as built" with a 6.55 feet to 6.70 feet side (north) yard setback. These exceptions are in lieu of the required 10-foot side yard setback, as required by the Hawai'i 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.

The request also requested to allow the two-story single-family dwelling with lanai to be approved under Section 25-4-66, De Minimus Regulation Structural Position Discrepancy and to remain "as built" with a 9.68-foot side (north) yard setback and encroaching 0.32 feet (3.84 inches) into the side (north) yard setback.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 10,076 square feet of land, is

located in the Kuakini Heights Subdivision, Unit II and is situated at La'aloa 1st and 2nd, District, North Kona, Hawai'i. The subject property's street address is 77-349 Ainanani Street.

2. **Zoning.** Single Family Residential – 10,000 square feet (RS-10)
3. **State Land Use.** Urban.
4. **Required Setback.** 20 feet for front; 10 feet for sides (corner lot). On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on February 7, 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 existing two-story single family dwelling with lanai and garage built into the side (north) yard setback.

The survey map shows that portions of the two-car garage encroach 3.30 feet to 3.45 feet into the 10-foot side (north) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (49688) was issued on January 13, 1971, for the construction of a 2-bedroom and 3-bath single-family dwelling.
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 February 7, 2014 and February 18, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on February 27, 2014.
9. **Time Extension.** The applicant's variance application was received on February 7, 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.** 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 two-story single family dwelling with lanai and the two-car garage into the 10-foot side (north) yard setback 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-car garage encroaches 3.30 feet to 3.45 feet into the 10-foot side (north) yard setback.

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.

It appears that the two-story dwelling constructed nearly 43 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 two-car garage did not disclose any building encroachment issues or building setback irregularities at that time.

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 north side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the two-car garage 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 two-car garage 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 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 encroachment of 3.30 feet to 3.45 feet into the side (north) yard setback still allows for adequate air circulation within the side yard setback.

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 43 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 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

This variance request is **approved** subject to the following conditions. Based on the variance application's survey map, the two car garage built upon the subject property ("LOT 15") will not

Klaus D. Conventz
Baumeister Consulting
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meet the minimum side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 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 two car garage 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. 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-14-000193 null and void.

Sincerely,



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
PLANNING DEPARTMENT

2014 SEP 10 PM 2:09



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-14-000193
Applicant: KLAUS CONVENTZ dba BAUMEISTER CONSULTING
Owner: HANNE JERNSTROM TRUST, NILS JERNSTROM,
TRUSTEE
Request: Variance from Chapter 25, Zoning, Article 5 Division 1,
Section 25-5-7, minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into North Side Yard Setback)
Tax Map Key: 7-7-019:015

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

090452

WORD: VAR-14-000193.ni