

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawaii Office  
71-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawaii 96740  
Phone (808) 323-4770  
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**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawaii Office  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

January 9, 2015

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

Dear Mr. Conventz:

**SUBJECT: Application: Variance – VAR-14-000230**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: PATRICIA FOWLER/MONICO L. CASTILLO JR.**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards; Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the Southwest Side Yard setback and Northeast rear yard setback).**  
**TMK: 7-3-029:037; Lot 37**

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The Planning Director certifies the **approval** of Variance No. 14-000230, subject to variance conditions. The variance will allow portions of the single-family dwelling to remain with a 17.1-foot rear (southwest) yard setback, in lieu of the required 20-foot rear yard setback. It also allows for the side (southwest) yard to remain with a 6.2 foot side (southwest) setback and associated 5-foot side yard open space, in lieu of the minimum 10-foot side (southwest) yard setback and associated 5-foot side (southwest) yard as required under Chapter 25. These exceptions are in lieu of the required 20-foot rear yard setback and 14-foot rear yard open space, along with the required 10-foot side yard setback and 5-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-in lieu of the minimum 14 foot side yard open space requirement, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements (a).

It was also requested to allow the single-family dwelling to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy and to remain with a 19.9-foot rear

(northwest) yard setback and encroaching 0.1 feet (1.2 inches) into the rear (northwest) yard setback.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 12,076 square feet of land, is located in the Kona Palisades Subdivision, Unit I and is situated at Kalaoa 5<sup>th</sup>, North Kona, Hawai'i. The subject property's street address is 73-4328 Ka Mua Place.
2. **Zoning.** Agricultural – 5 acres (A-5a).
3. **State Land Use.** Urban.
4. **Required Setback.** 20 feet for front; 10 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 28, 2014, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Chrystal Thomas Yamasaki, L.P.L.S., (Wes Thomas & Associates), denotes the portions of the single-family dwelling built into the rear (northeast) yard setback and into the side (southwest) yard setback and associated side (southwest) yard open space.

The survey map shows that the single-family dwelling encroaches 3.8 feet into the 10-foot side (southeast) yard setback and 2.5 feet into the 5-foot side yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (46544) was issued on November 24, 1971, 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 August 22, 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 July 28, 2014 and August 18, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on September 19, 2014.
9. **Time Extension.** The applicant's variance application was received on August 8, 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 January 15, 2015.

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 survey map prepared by Chrystal Thomas Yamasaki, L.P.L.S., (Wes Thomas & Associates), shows that portions of the single-family dwelling encroach 2.9 feet into the 20-foot front (northeast) yard setback and 3.8 feet into the 10-foot side (southwest) yard setback and 2.5 feet into the 5-foot side 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 single-family dwelling encroachment problems to occur.

The applicant and surveyor discussed the question of the rear yard location in cul-de-sac situations with staff of the Planning Department's West Hawai'i. They were informed that the current interpretation is that the northerly boundary would constitute the rear boundary. However, it should be noted that a similar shaped parcel (TMK: 7-3-029:032) which abuts the western boundary of the subject property was given a rear setback along the same boundary that abuts the subject property. (See attached site plan). Therefore, the west boundary could have also been determined as the rear yard.

It appears that the single-family 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 single-family dwelling 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 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.

Because the encroachments are within the rear and 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 rear and 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 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 single-family dwelling has been in existence for approximately 43 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.

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 no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining 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**

Based on the variance application's survey map, the utility meter shed built upon the subject property ("LOT 37") will not meet the minimum rear and side yard setback and 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 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.

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Baumeister Consulting  
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4. Should 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.
5. This variance does not apply with 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.
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-14-000230 null and void.

Sincerely,

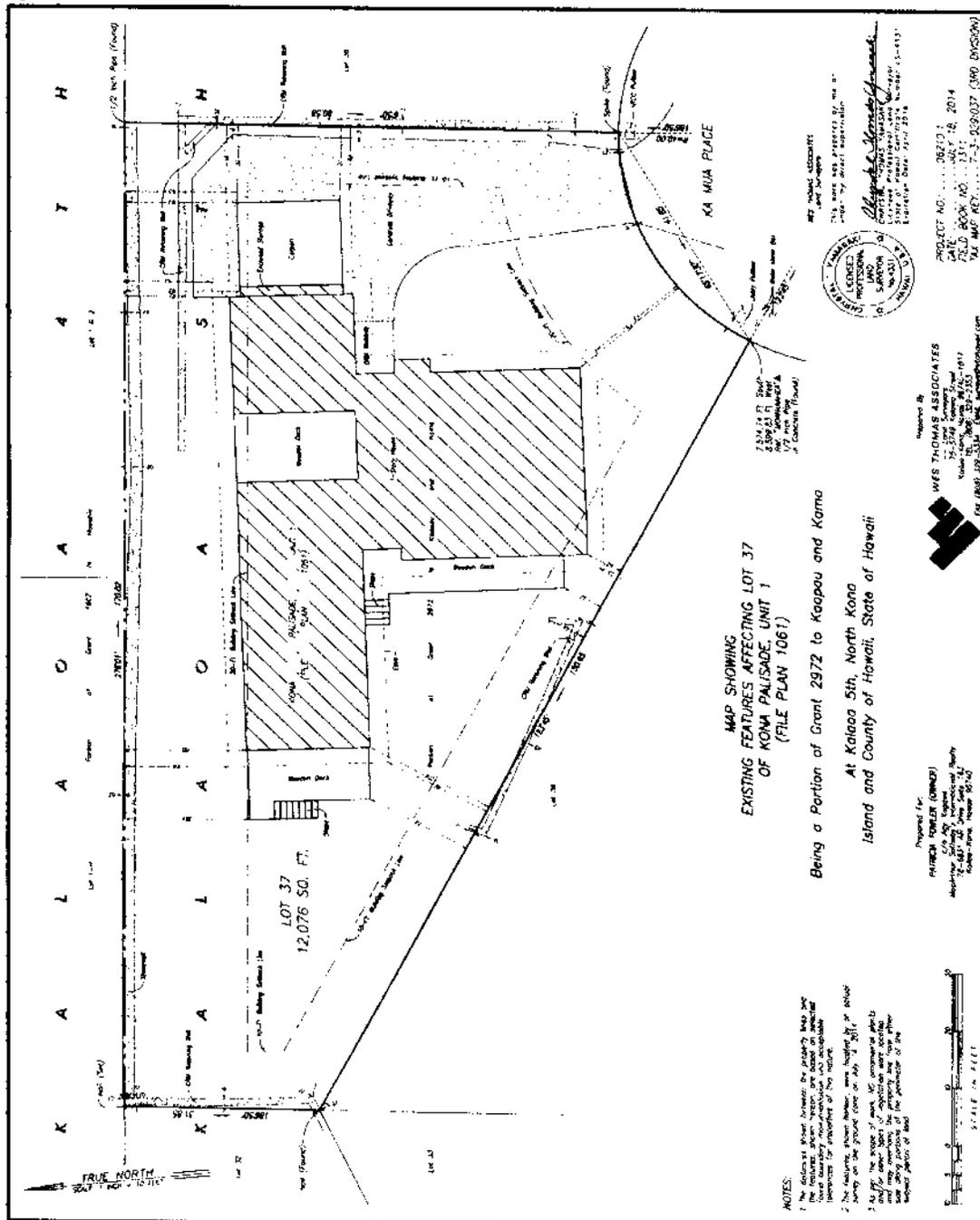


DUANE KANUHA  
Planning Director

LHN:nci

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



**MAP SHOWING  
 EXISTING FEATURES AFFECTING LOT 37  
 OF KONA PALISADE UNIT 1  
 (FILE PLAN 1061)**

Being a Portion of Grant 2972 to Kaopou and Kama  
 At Kaunaloa 5th, North Kona  
 Island and County of Hawaii, State of Hawaii

**NOTES:**

- The dimensions shown indicate the property lines and are based on the most recent survey of the property and are subject to change if a more accurate survey is conducted.
- The features shown herein were located by or about July 18, 2014. The owner of the property and the engineer accept no responsibility for the accuracy of the information shown.
- The owner of the property and the engineer accept no responsibility for the accuracy of the information shown.

Prepared For:  
**PATRICK POWELL (OWNER)**  
 2445 W. Kona Dr., Suite 100  
 Kailua-Kona, Hawaii 96740

Prepared By:  
**WES THOMAS ASSOCIATES**  
 2445 W. Kona Dr., Suite 100  
 Kailua-Kona, Hawaii 96740  
 Tel: (808) 328-3334 Fax: (808) 328-3334  
 www.westhomas.com

Project No.: 08270  
 Date: JULY 18, 2014  
 Field Book No.: 1311  
 File Map Key: 7-3-03/037 (390 DIVISION)



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Baumeister Consulting  
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NEIL ABERCROMBIE  
GOVERNOR



PLANNING DEPARTMENT  
COUNTY OF HAWAII  
PA ROSEN, M.D., M.P.H.  
DIRECTOR OF HEALTH

2014 AUG 25 AM 9:40

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

MEMORANDUM

DATE: August 22, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 14-000230  
Applicants: KLAUS CONVANTZ dba BAUMEISTER CONSULTING  
Owner: PATRICIA FOWLER  
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-76, Minimum Yards; Article 4, Division 4,  
Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements (Encroachment into the South  
Side Yard Setback and North Rear Yard Setback.  
Tax Map Key: 7-3-029:037

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

OWNER SHALL ASSURE PROPER SETBACKS OF STRUCTURES TO PROPERTY LINES

DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

ROADWAY: IN ACCORDANCE WITH CHAPTER 22 OF THE HAWAII COUNTY CODE, A PERMIT SHALL BE OBTAINED FOR ROADWAY CONSTRUCTION WORK WITHIN THE COUNTY ROAD RIGHT-OF-WAY.

STANDARD: ALL FUTURE AND GRADING SHALL COMPLY TO CHAPTER 13 OF THE HAWAII COUNTY CODE PERTAINING TO GRADING.

CHANGES: NO ADDITIONAL MATERIAL SHALL BE DISPOSED BY THIS PROJECT UNLESS APPROVED BY THE ENGINEER. CHANGES TO THE HAWAII COUNTY CODE SHALL BE REFERENCED TO CHAPTER 27 OF THE HAWAII COUNTY CODE.

ROADWAY: CHECK WITH HIGHWAYS DIVISION'S ROADWAYS MAINTAINED BY COUNTY OF HAWAII

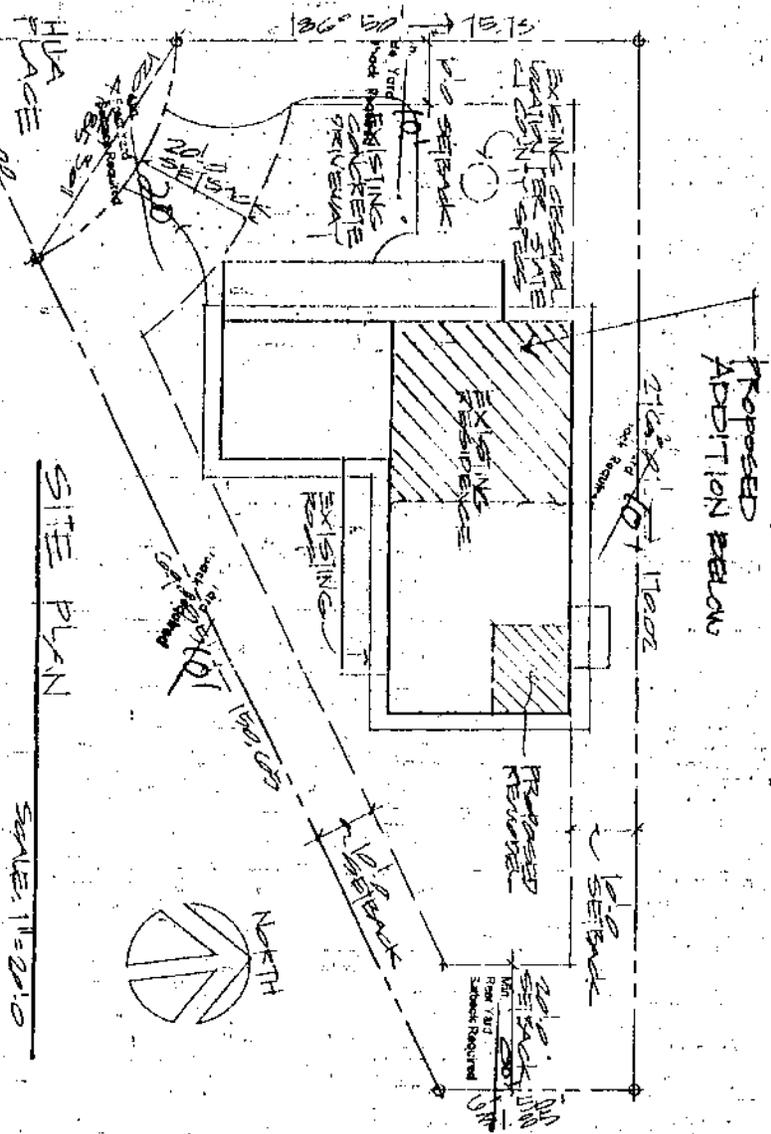
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

REVIEWED BY: *[Signature]*  
DATE: 9/22/11

DEPARTMENT OF HEALTH  
Environmental Management Division  
Pia Humphreys, Director

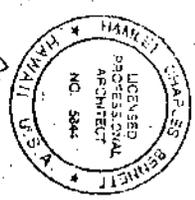
ENVIRONMENTAL HEALTH SERVICES (EHS) APPROVAL FOR USE

Date: 11/11/11  
Approved by: *[Signature]*



SITE PLAN

SCALE: 1" = 20'-0"



This work was prepared by me or under my direct supervision and I am a duly licensed professional architect in the State of Hawaii. I am not providing any professional services in any other jurisdiction.

*[Signature]*  
Seal No. 5844

ADDITION 960 SQ. FT.  
REMODEL 240 SQ. FT.

PIO HUMPHREYS  
REMODEL  
KONA PALMS SUBDIVISION  
NORTH KONA, HAWAII  
MK = 7.5.29:52