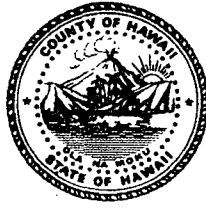


William P. Kenoi
Mayor



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 30, 2015

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-14-000241

Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING

Owners: HANDGIS TRUST

Request: Variance from Chapter 25, Zoning, Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements and Chapter 25, Article 4, Division 4, Section 25-4-43. Fences and Accessory Structures (Encroachment into the Southeast Front Yard Open Space and Height of Accessory Structures).

TMK: 7-8-012:062; Lot18

The Planning Director certifies the **approval** of VAR-14-000242, subject to variance conditions. The variance will allow portions of the existing rock wall inside the front yard setback to remain “as-built” with a height of 6.75 feet and it also allows for portion of the gate to remain with a height of 6.67 feet in lieu of the maximum 6 feet above grade. These exceptions are in lieu of the maximum 6.00 feet height above grade, as required by the Hawai'i County Code, Chapter 25, Zoning, Article 4, Division 4, Section 25-4-43 Fences and Accessory Structures, (c).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 9,634 square feet of land, is located in the Keauhou Bay Lots and is situated at Keauhou 1st, North Kona, Hawai'i. The subject property's street address is 78-107 Holua Road.
2. **Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).

3. **State Land Use.** Urban.
4. **Required Setback.** 15 feet front and rear, 8 feet for side yards.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 10, 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 portion of the rock wall being over 6 feet in height built into the front yard setback.

The survey map prepared by Chrystal Thomas Yamasaki, L.P.L.S., (Wes Thomas & Associates), shows that portion of the CRM rock wall and the gate built into the front (southeast) yard setback is 0.75 feet (9 inches) and 0.67 feet 8 inches) over the required height limit of 6 feet. (Section 25-4-43 Fences and Accessory structures)

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (03524) was issued on April 30, 1979, for the construction of a 5-bedroom and 3-1/2-bath, single-family dwelling. A subsequent building permit (B2009-0173K) was issued on February 24, 2009 for the construction of a CRM rock wall over 6 feet in height.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated October 28, 2014.
(See attached memorandum)
 - b. No comments received from the Department of Public Works–Building Division (Kona).
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 October 10, 2014 and October 31, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on October 24, 2014.
9. **Time Extension.** The applicant's variance application was received on October 21, 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, 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 portion of the CRM Rockwall is 0.75 feet (9 inches) and the gate is 0.67 feet 8 inches) over the required height limit of 6 feet into the front (southeast) yard setback. (Section 25-4-43 Fences and Accessory structures)

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the rock wall and gate built into the front (southeast) boundary to be built over the 6-foot height limit to occur.

It appears that the rock wall and gate constructed nearly 6 years ago was constructed under valid building permit (B2009-0173K) 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 rock wall and gate 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 the rock wall and get 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 rock wall and gate 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; 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.

It should be noted that the height limit violation is rather miniscule; therefore, it does not have any significant impact and still allows for adequate air circulation and exposure to light.

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 rock wall and gate has been in existence for approximately 6 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.

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.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the rock wall and gate built upon the subject property ("LOT 18") 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 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. This variance does not apply to the encroachment issue regarding the CRM (concrete, rock, masonry) wall onto the private roadway lot. These issues shall be addressed by the property owners affected by the CRM wall encroachments.
5. Should the rock wall and gate 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.

Klaus D. Conventz
Baumeister Consulting
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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-14-000242 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

Klaus D. Conventz
Baumeister Consulting
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NEIL ABERCROMBIE
GOVERNOR



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

2014 OCT 30 PM 3:00

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

MEMORANDUM

DATE: October 28, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000241
Applicants: KLAUS CONVENTZ dba BAUMEISTER CONSULTING
Owner: GEORGE AND SHARON HANDGIS TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7 Minimum yards; Article 4, Division 4, Section
25-4-44(a), Permitted Projections into yards and Open Space
Requirements (Encroachment into the Northeast Front Yard
Setback).
Tax Map Key: 7-8-012:062

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

