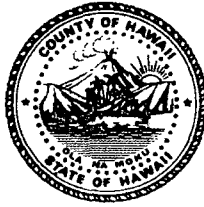


William P. Kenoi
Mayor



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 29, 2015

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-14-000254
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: DONALD AND VESTA MCDONALD TRUST
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 Northwest Side Yard setback).
TMK: 7-6-009:028; Lot 9-A-1-A

The Planning Director certifies the **approval** of Variance No. 14-000254, subject to variance conditions. The variance will allow portions of the two-story single-family dwelling to remain with an 18.5-foot side (northwest) yard setback, in lieu of the required 20-foot rear yard setback and associated roof eave with a 13.7 side (northwest) side yard open space in lieu of the required 14-foot open space requirement. It also allows for the open carport with associated roof eave with an 8.9 foot side yard open space and the open gazebo with associated roof eave with a 7.8 foot side yard open space in lieu of the 14-foot side yard open space requirement. These exceptions are in lieu of the required 20-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.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 2.258 acres of land, is situated at Holualoa, 1st and 2nd, North Kona, Hawai'i. The subject property's street address is 76-787 Hualalai Road.

2. **Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** Flag lot - 20 foot side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on November 12, 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, open carport and open gazebo built into the side (northwest) yard setback and associated side (northwest) yard open space.

The survey map shows that the two-story single-family dwelling encroaches 1.5 feet into the 20-foot side (southeast) yard setback and 0.3 feet into the 14-foot side yard open space. It also shows that the open carport encroaches 5.1 feet and the open gazebo encroaches 6.2 feet into the 14-foot side (southwest) yard open space.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (K00017) was issued on July 23, 1973, for the construction of a 1-bedroom and 1-bath single-family dwelling. The subsequent building permit was issued for the following: building permit 896829 which was issued on December 11, 1989 for the remodel and alteration of a single-family dwelling to a duplex.
7. **Ohana Dwelling.** Ohana Dwelling Permit (OD 89-99) issued on April 28, 1989.
8. **Subdivision.** Subdivision No.7709 (SUB 2002-0097) approved May 19, 2003.
(Subdivision of Lot 9-A-1, Being a portion of RP 8217, L.C. AW. 3660 into Lots 9-A-1-A and 9-A-1-B)
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated December 16, 2014.
(See attached memorandum)
 - b. The Department of Public Works Building Division's (Kona) e-mail dated December 1, 2014. (Refer to attached DPW e-mail)
10. **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 12, 2014 and December 3, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on December 16, 2014.

11. **Time Extension.** The applicant's variance application was received on November 12, 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.
12. **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 shows that the two-story single-family dwelling encroaches 1.5 feet into the 20-foot side (southeast) yard setback and 0.3 feet into the 14-foot side yard open space. It also shows that the open carport encroaches 5.1 feet and the open gazebo encroaches 6.2 feet into the 14-foot side (southwest) yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears except for the open gazebo, the single-family dwelling/duplex improvements and carport constructed in 1989; nearly 26 years ago were 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 and duplex improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The applicant has stated that the encroachment of the duplex addition could have been created by honest staking errors due to the irregularity of the northern boundary. Also, according to the applicant the carport, except for the 4-foot wide shear walls which was a requirement of the Building Code, the carport is completely open.

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 open carport and gazebo 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 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 26 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is

Klaus D. Conventz
Baumeister Consulting
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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.

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 single-family dwelling and gazebo built upon the subject property ("LOT 9-A-1-A") 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 a farm dwelling upon the subject property.
4. Should the single-family dwelling, carport and gazebo 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.

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5. The owners shall secure building permits for all unpermitted structures stated in DPW Building Division (Kona) memorandum dated December 1, 2014.
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-14-000254 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

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR14-000254TMK7-6-009-028McDonaldTrust.doc.rtf

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

Klaus D. Conventz
Baumeister Consulting
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April 29, 2015

DAVID Y. IGE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 DEC 17 PM 2:31



KEITH YAMAMOTO
ACTING DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: December 16, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance – VAR-14-000254
Applicant: KLAUS D. CONVENTZ
dba BAUMEISTER CONSULTING
Owner: PATRICK MCDONALD & VESTA MCDONALD TRUST
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 Side (North) Yard
Setback.
Tax Map Key: 7-6-009:028; Lot 9-A-1-A

Wastewater Branch has no objections to the project. However, information on existing wastewater systems are incomplete. The applicant and/or applicant's representative will be responsible to make sure all existing wastewater system(s) meet the minimum setback distances to all proposed new property lines as required per Hawaii Administrative Rules, Chapter 11-62. Violations will be subject to fines and may require up-grades to current requirements.

When two or more dwellings are connected to a cesspool, the cesspool is considered a large capacity cesspool. EPA requires closure or upgrade of the large capacity cesspool by April 5, 2005 or the owner could face enforcement action by EPA, including a fine of \$32,000 per day per cesspool. In addition, State Wastewater Rules no longer allows an existing cesspool to service two dwellings regardless of the number of bedrooms.

WORD: VAR-14-000254.ni

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Klaus D. Conventz
Baumeister Consulting
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Revision VAR-14-000254 request - Nakayama, Larry

Page 1 of 1

Revision VAR-14-000254 request

PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 DEC -1 PM 12: 51

Crosby, Tina

Mon 12/1/2014 10:33 AM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

Cc: Debina, Angela <Angela.Debina@hawaiicounty.gov>;

Variance request additional information. The permits that have been taken out are completed and final. Additional permits may be required and change of use application for storage to garage and or carport. Please see the B-10 for comments.

Tina Crosby
Building Inspector Aide
Department of Public Works
Building Division
808-323-4720

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Klaus D. Conventz
Baumeister Consulting
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April 29, 2015



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

December 1, 2014

SUBJECT: McDonald Trust

TMK: 7-6-009-028

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No _____ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.

The following violations(s) still outstanding:

Building Electrical Plumbing Sign

x Others: Potential change of use permit for storage to garage or carport and possible additional permit may be required for additional square footage.

Decking does not appear to be permitted. If gazebo is to remain an additional as built permit will be required.

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720

Klaus D. Conventz
Baumeister Consulting
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BUILDING DIVISION – DPW

PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 DEC -1 PM 1:32

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

December 1, 2014

SUBJECT: McDonald Trust

TMK: 7-6-009-028

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No _____ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.

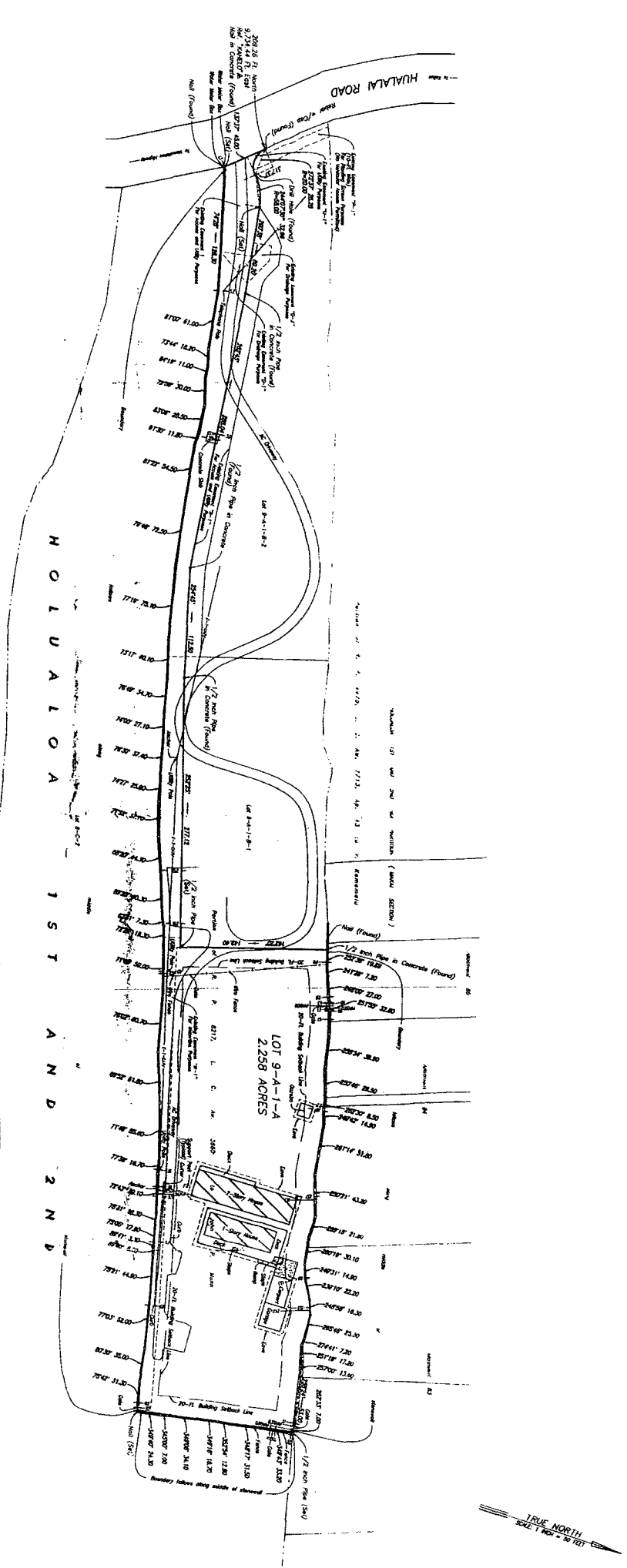
The following violations(s) still outstanding:

Building Electrical Plumbing Sign

Others:

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720



MAP SHOWING
EXISTING FEATURES AFFECTING LOT 9-A-1-A
 Being a Portion of
R. P. 8217, L. C. Aw. 3660 to John P. Munn
 At Hualaloe 1st and 2nd, North Kona
 Island and County of Hawaii, State of Hawaii

A portion between the adjacent and adjacent
 of measurement and recorded
 of this record.
 shown herein were located by an official
 of the State of Hawaii on January 24, 1959
 of the map, and the original plat
 of the property, the form either
 of the



JOHN P. MUNN, Surveyor
 505 Puuoa Street
 Hualaloe, Hawaii 96720

WEST TOWNSHIPS ASSOCIATES
 75-5744 Kapaemahu Street
 Kapaemahu, Hawaii 96720-1417
 FAX (808) 328-2331 Email: survey@westtownships.com



JOHN P. MUNN, Surveyor
 No. 1314
 State of Hawaii
 Surveyor's Office
 1501 Kalia Road, Honolulu, HI 96813

PROJECT NO. 1280/74
 FIELD BOOK NO. 1314
 MAP NO. 7-6-008-028