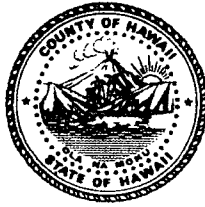


William P. Kenoi  
Mayor



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 D. Conventz  
Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, HI 96740

Dear Mr. Conventz:

**SUBJECT: Application: VARIANCE – VAR-15-000271**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: BRYAN & REBECCA FUJIKAWA**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into the South Front Yard Setback)**  
**TMK: 8-1-012:047; (Lot 35-A)**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-15-000271, subject to variance conditions. The variance will allow the existing certified kitchen to remain on the subject property with a 13.25-foot front (south) yard setback and carport roof eave with a 7.80-foot front (south) yard open space. This allowance is in lieu of the minimum 15-foot front yard setback requirement and 10-foot front yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards, (2) (A) and Article 4, Division 4, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

- 1. Location.** The subject property consists of approximately 8,005 square feet of land and is situated at Keekee South Kona, Hawai'i. The subject property's street address is 81-971 Kahapili Loop.
- 2. County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
- 3. State Land Use.** Urban.

**4. Setback Requirements:** 15 feet for front and rear; 8-foot sides.

**5. Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on September 4, 2013. The variance application's site plan map is drawn to scale and was prepared by Thomas G. Pattison L.P.L.S., Pattison Land Surveying, Inc., and denotes the positions of the certified kitchen into the south front yard setback and carport roof eave into the south front yard open space.

The survey map shows that portions of the certified kitchen encroaches 1.75 feet into the front (north) yard setback and a minimum of 1.3 feet to a minimum of 3.15 into the 8-foot side (west) yard setback and the carport roof eave encroaches 2.2 feet into the front (south) yard open space.

**6. County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (15954) was issued on February 10, 1955, for the construction of a 3-bedroom and 1-bath single-family dwelling. The following building permits were issued: building permit 02078 for the open carport was issued on May 10, 1977 and building permit 032349 for the certified kitchen was issued on November 26, 2003.

**7. Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated March 5, 2015. (See attached)
- b. No comments have been received from Department of Public Works – Building Division.

**8. Public Notice.** 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 6, 2015 and September 19, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 24, 2015.

**9. Time Extension.** The applicant's original variance application was received on September 12, 2013 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.

## GROUNDS FOR APPROVING VARIANCE

### **Special and Unusual Circumstances**

*(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 certified kitchen into the 15-foot front (south) yard setback and the 10' front (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 certified kitchen encroaches 1.75 feet into the front (south) yard setback and the carport roof eave encroaches 2.20 feet into the front (south) yard open space.

The survey map shows that the single-family dwelling encroaches into the front (south) yard setback and front yard open space. However, the Hawai'i County Real Property Tax office records indicate that the single-family dwelling was built prior to 1967. Therefore, since the construction of the single-family dwelling occurred before the adoption of the Zoning Code, the existing dwelling is considered a legal, "non-conforming" structure that remains in compliance with the Zoning Code.

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. It appears that the certified kitchen constructed in 2003 nearly 12 years ago and the carport constructed in 1977 approximately 38 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements 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 subject property.

### **Alternatives**

*(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 front yard setback and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the certified kitchen and carport to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the certified kitchen and carport 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.

Both of these alternatives are not practical; therefore, there are no other reasonable alternatives to resolve these encroachment issues.

**Intent and Purpose**

***(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 welfare or cause substantial, adverse impact to an area's character or to adjoining properties.***

**The variance application meets criterion (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 the certified kitchen of 1.75 feet into the 15-foot front (south) yard setback and the carport roof eave encroaching 2.20 feet into the front yard open space still allows for adequate air circulation, as the affected area is within the front setback adjacent to roadway frontage.

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 this office did not receive any complaint from surrounding property owners during the past 12 years of existence of the certified kitchen.

Further, objections were not received from the adjacent owner, 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 above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the certified kitchen and carport built upon the subject property ("LOT 35-A") will not meet the minimum side yard setback and 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 related to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code's minimum side yard setback and front yard open space requirement. The approval of this variance allows the existing certified kitchen and carport to remain on the subject property, pursuant to the variance application's site plan map.
4. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.

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Baumeister Consulting  
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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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 15-000271 null and void.

Sincerely,



DWANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone8\VAR15-000271\TMK8-1-012-047Fujikawa.doc.rtf

xc: Kona Office  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS (via email)

Klaus D. Conventz  
Baumeister Consulting  
Page 7  
April 29, 2015

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

2015 MAR 06 PM 2:23

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

MEMORANDUM

DATE: March 5, 2015

TO: Mr. Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye ✓  
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 15-000271  
Applicant: KLAUS D. CONVENTS/BAUMEISTER CONSULTING  
Owner: BRYAN & RECECCA FUJIKAWA  
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 Front (South) Yard  
Setback and Rear (North) Yard Setback).  
Tax Map Key: 8-1-012:047

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

WORD: VAR 15-000271.ni

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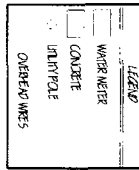
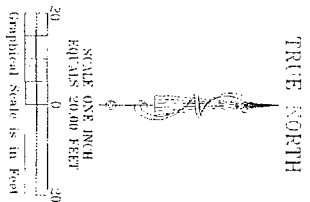
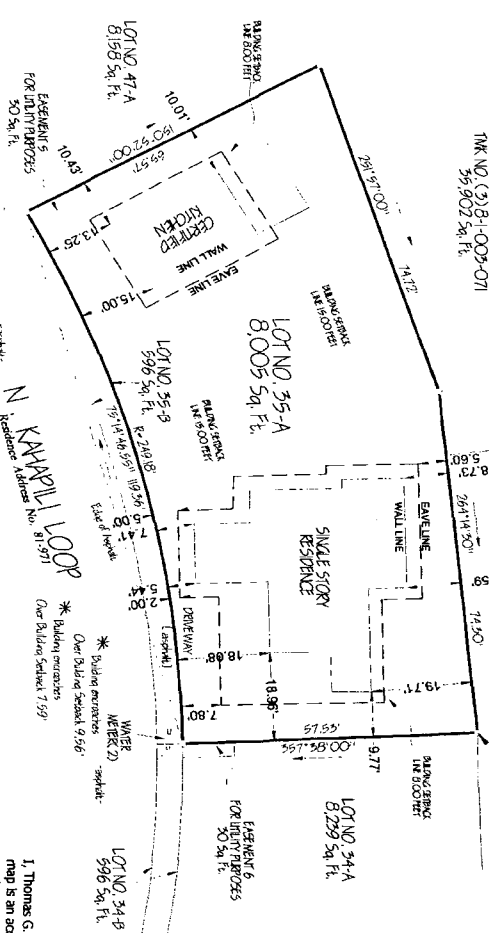
**MAP SHOWING EXISTING CONDITIONS UPON**  
**LOT NO. 35-A**

as Shown on Map 14, Filed in the Office of the  
 Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No.  
 1609 of Alice Kealoha Hao, Administratrix of the Estate of David Hao, also known as David  
 Kalua Hao, Deceased, and Others.  
 All That Certain Parcel of Land Situate at Keekae, South Kona, County of Hawaii (Island of Hawaii  
 and State of Hawaii  
 TMK No. (3) 8-1-012-047

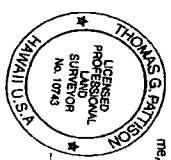
NOTE: BASIS OF AZIMUTH DERIVED  
 USING SONSAR GPS RTK SYSTEM  
 NOTE: ALL CORNERS ARE FOUND  
 BY REAL PINS IN CONCRETE  
 UNLESS OTHERWISE NOTED  
 NOTE: ALL AZIMUTHS & DISTANCES  
 ARE SPAN & WPPED FROM  
 N.A. CLOCKWISE DIRECTION

NOTES:  
 1) No boundary encroachments were  
 found.  
 2) The distances shown between the  
 property lines & the features shown  
 herein, are based on selected found  
 boundary monuments & acceptable  
 references for properties of this type.  
 3) The features, shown herein, were  
 located by an actual survey performed  
 on the ground on January 21st, 2015.  
 4) See accompanying report pertaining  
 to setbacks and encroachments.

Setback Lines are shown from current data, but should be verified by builder. The description on this map was produced to us by the  
 applicant and we have not verified the same. We are not responsible for any errors or omissions in the description, building lines and setbacks may or may not be shown, check your deed, Assessor, Title Report, and local ordinances.  
 Dimensions are shown in feet and decimal part thereof, no  
 dimensions to be assumed by scaling



I, Thomas G. Pattison, do hereby certify that this  
 map is an accurate representation of a survey as  
 made on the ground, by me, or under my direct  
 supervision and that there are no apparent or  
 visible encroachments or easements, known to  
 me, except as shown and mapped herein.



**THOMAS G. PATTISON**  
 LICENSED PROFESSIONAL LAND SURVEYOR  
 No. 10743  
 HAWAII U.S.A.  
 THOMAS G. PATTISON  
 Hawaii License No. 10743  
 January 22nd, 2015 - 300 15039  
 68-1125 South Kula Road • Unit 306  
 Kaneohe Hawaii 96743 Phone 327-9436

**PATTISON LAND SURVEYING, INC.**