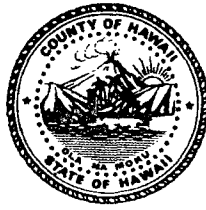


William P. Kenoi  
Mayor



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

July 27, 2015

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE APPLICATION – VAR-15-000280**

**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**

**Owners: DAVID A. & IMOGENE M. STEVENS**

**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: 7-3-005:109; Lot 5-D-4**

The Planning Director certifies the **approval** of Variance No. 15-000280, subject to variance conditions. The variance will allow portion of the carport to remain with a minimum 15.1-foot side (northwest) yard setback to a minimum 19-foot side (northeast) side yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 12.4-foot side (northwest) yard open space in lieu of the required 14-foot open space requirement. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 1.001 acres of land, is situated at North Kona, Hawai'i. The subject property's street address is 71-4301 Keokeo Street.
2. **Zoning.** Agricultural – 1 acre. (A-1-a).
3. **State Land Use.** Agricultural

4. **Required Setback.** Front & Rear – 30 feet; Sides – 20 feet.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 27, 2015, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Chrystal T. Yamasaki, L.P.L.S., (Wes Thomas Associates), denotes the portions of the carport built into the side (northwest) yard setback and associated side (northwest) yard open space.

The survey map shows that the enclosed screened lanai encroaches 4.9 feet into the 20-foot rear (southeast) yard setback and 1.6 feet into the 14-foot side (northwest) yard open space.

The encroachment leaves a minimum 15.1-foot side (northwest) yard setback to a minimum 19-foot side (northeast) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 12.4-foot side yard open space in lieu of the required 14-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (975227) was issued on April 3, 1997, for the construction of a 2-bedroom and 2.5-bath, single-family dwelling. A subsequent building permit (B2009-0911K) was issued on November 16, 2009 for the construction of a 2 bedroom and 2-baths single-family dwelling.
7. **Ohana Dwelling.** Ohana Dwelling Permit (OD 94-199) was issued on June 29, 1994.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated May 13, 2015.  
(See attached memorandum)
  - b. No comments received from the Hawaii County Public Works Department-Building Division.
9. **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 notices were mailed on March 27, 2015 and April 15, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 13, 2015.
10. **Comments from Surrounding Property Owners or Public.** An objection letter from Shadow Diessner was received on April 27, 2015.
11. **Time Extension.** The applicant's variance application was received on April 7, 2015 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 July 31, 2015.

**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 carport encroaches 1-foot to 4.9 feet into the 20-foot side yard setback and 1.6 feet into the 14-foot side (northwest) yard open space.

The encroachment leaves a minimum 15.1-foot side (northwest) yard setback, in lieu of the required 20-foot side (northwest) yard setback and associated roof eave projection resulting with a 12.4-foot side (southeast) yard open space in lieu of the required 14-foot open space requirement.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the carport encroachment problems to occur.

The applicant has stated the current owners, David and Imogene Stevens, were unaware of any permitting and encroachment issues at the time of purchase and no disclosure was given during escrow procedure. It should be noted that the first carport, which was built entirely into the side (north) yard setback, has been completely removed. However, when a recent survey was conducted by Wes Thomas Associates, it revealed that the second carport was encroaching into the side yard setback.

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 carport encroachments constructed into the affected northwest side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the carport constructed upon the subject property 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 current owners were under the impression that the carport was in compliance with all County requirements. Also, any structural or design correction of the carport 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 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 carport has been in existence for approximately 18 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.

An objection letter was received by Mr. Shadow Diessner (see attached letter) requesting that the variance be denied. Mr. Diessner states the following:

1. The carport is elevated about 6-8 ft. above our property and changes the entire view from our

back yard, side yard, and all through our two-story house, through any window looking that direction.

*The subject subdivision is approximately 100% built-up with a few vacant lots remaining. The adjoining property to Mr. Diessner's property is fully developed and does limit his view of both sides and rear of his property. Even with the removal of the carport, Mr. Diessner's side view will still be limited by the legally permitted ohana dwelling.*

2. This area and subdivision is made up of larger, nicer homes, none of which have a detached carport.

*No evidence was provided by Mr. Diessner that detached carports are prohibited in the subdivision.*

3. This carport was originally built from old, reused materials, not new.

*This Department is not the appropriate agency that deals with this issue, it should be noted that the Department of Public Works – Building Division did not offer any comments when it was solicited for comments with regards to this variance application.*

4. This property TMK: 7-3-005:109, is already permitted for an additional house on a A-1a lot creating two large rooflines. This carport not only adds yet another, but encroaches into my property's setback, making it even more intrusive.

*The carport does not encroach onto Mr. Diessner's property.*

5. According to my realtor, this structure devalues my property by up to \$20,000.

*Mr. Diessner nor his realtor provided this office with any evidence or an appraisal with regards to any devaluation of his property.*

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 5-D-4) will not meet the minimum 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:

David A. & Imogene M. Stevens  
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July 27, 2015

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 carport 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-15-000280 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

David A. & Imogene M. Stevens  
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July 27, 2015

**Camero, Tracie-Lee**

**From:** Shadow Diessner <shadowjackdiessner@gmail.com>  
**Sent:** Monday, April 27, 2015 2:52 PM  
**To:** Planning Internet Mail  
**Subject:** Comments to application for Variance VAR-15-000280 TMK:7-3-005:109 .  
**Attachments:** application for variance VAR-15-000-280 comments.pdf

Aloha,

To the Planning Director, County of Hawaii.

Regarding the application for Variance: VAR-15-000280 TMK:7-3-005:109

My name is Shadow Diessner. I own the adjacent property (TMK: 7-3-005-108) on the North boundary of the property applying for variance: VAR-15-000280.

I am asking that you **do not** approve this application for variance.

My property TMK: 7-3-005-108 is directly affected by this building / application for variance as it encroaches into the County required 20ft side yard setback between my property.

This carport is elevated about 6-8 ft. above our property and changes the entire view from our back yard, side yard, and all through our two story house, through any window looking that direction.

This area and subdivision is made up of larger, nicer homes, none of which have a detached carport.

This carport was originally built from old, reused materials, not new.

This property TMK:7-3-005:109, is already permitted for an additional house on a AG1 lot creating two large rooflines. This carport not only adds yet another, but encroaches into my property's setback, making it even more intrusive.

According to my realtor, this structure devalues my property by up to \$20,000.

I am asking that you do not approve this application for variance, as it encroaches on my property and devalues my home. I ask that you uphold the county required 20ft setback.

Respectfully,

~Shadow Diessner  
owner of affected property  
TMK:7-3-005:108

David A. & Imogene M. Stevens  
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July 27, 2015

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

PLANNING DEPARTMENT  
2015 MAY 15 PM 12:15  
**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: May 13, 2015

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

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-15-000280  
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING  
Owner: DAVID A. AND IMOGENE M. STEVENS  
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  
Requirement (Encroachment into Side (North) Yard Setback)  
Tax Map Key: 7-3-005:109; Lot 5-D-4

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

WORD: VAR-15-000280.ni

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