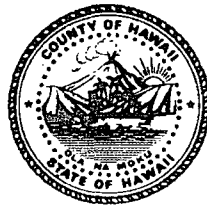


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
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**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
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October 5, 2015

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE APPLICATION – VAR-15-000289**

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

**Lessor: B.P. BISHOP ESTATE**

**Lessee: CHERRY A. BUCHOLTZ AND  
JEFFERY S. MCCASH (DECEASED)**

**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 Front (North) and East)  
Yard Setback and Side (South) Yard Setback).**

**TMK: 7-8-016:007; Lot 21**

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The Planning Director certifies the **approval** of Variance No. 15-000289, subject to variance conditions. The variance will allow portion of the attached carport to remain with a minimum 14.5-foot front (north) yard setback to a minimum 17.9-foot front (north) front yard setback, in lieu of the required 30-foot side yard setback and associated roof eave projection resulting with a 11.9-foot front (north) yard open space to a minimum of 18.80-foot (north) front yard open space in lieu of the required 24-foot open space requirement. It will also allow for the drying shed with a front yard setback of 16.40 feet and associated roof eave projection resulting in a 15.90 front yard open space and an detached garage with a front yard setback ranging from 9.00 to 9.30 feet, in lieu of the minimum 30.00 foot front yard setback and 24 foot front yard open space requirement. This variance will also allow a water tank 3.75 feet in height to remain with a 4.90-foot front (east) yard setback and a water tank with pump 4.3 feet in height to remain with a 4.80-foot side (east) yard setback. These exceptions are in lieu of the required 30-foot front yard setback and 24-foot front yard open space and the required 20-foot side yard setback and 14-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.

The survey map references an encroachment of a rock wall and gate onto the Mokuaikaua Road, a private roadway owned by B. P. Bishop Estate. The rock wall and gate are excluded from this variance approval, as the encroachment should be addressed with the owners, B.P. Bishop Estate, and the Lessee of the property, Cherry Buchlotz and Jeffery S. McCash (Deceased).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 7.30 acres of land is located in the Keauhou-Kahalu'u farm lots and is situated at Keauhou 1<sup>st</sup>, North Kona, Hawai'i. The subject property's street address is 78-6665-A Māmalahoa Highway.
2. **Zoning.** Agricultural – 5 acre. (A-5-a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 30-foot front; 20-foot for sides; Section 25-4-42, Corner building sites:  
(a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on May 22, 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 single-family dwelling with attached carport, detached garage and drying shed built into the front (north) yard setback and associated front (north) yard open space.

The survey map shows that the attached carport encroaches 12.1 feet to 15.5 feet into the 30-foot front (north) yard setback and 5.2 feet to 12.1 feet into the 24-foot side (north) yard open space. The drying shed encroaches 13.6 feet into the 30-foot front yard setback and the associated roof eave encroaches 8.1 feet into the front yard open space. The detached garage encroaches 20.7 to 21 feet into the front yard setback. The water tank 3.75 in height encroaches 25.90 feet into the front (east) yard setback and the second water tank 4.3 feet in height encroaches 15.20 feet into the side (south) yard setback.

The encroachment leaves the attached carport with a minimum 14.5-foot front (north) yard setback to a minimum 17.9-foot side (north) front yard setback, in lieu of the required 30-foot side yard setback and associated roof eave projection resulting with a 11.9-foot front (north) yard open space to a minimum of 18.80 (north) front yard open space in lieu of the required 24-foot open space requirement. It will also allow for the drying shed with a front yard setback of 16.40 feet and associated roof eave projection resulting in a 15.90-foot front yard open space, an detached garage with a front yard setback ranging from 9.00 to 9.30 feet, a 3.75 high water tank with a 4.90-foot front (south) yard setback in lieu of the

minimum 30.00-foot front yard setback and 24-foot front yard open space requirement. It also leaves a 4.3 feet high water tank with a 4.80 side (east) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B17711) was issued on April 26, 1956, for the construction of a 2-bedroom and 1-bath, single-family dwelling. Subsequent building permits were issued on March 16, 1977 (B2307 (B23007) for the construction of an attached carport, on January 30, 2004 (B2004-190K) for the construction of an agricultural shed.
7. **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.
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 March 22, 2015 and June 12, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on June 16, 2015.
9. **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.
10. **Time Extension.** The applicant's variance application was received on May 22, 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 October 9, 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 the attached carport encroaches 12.1 feet to 15.5 feet into the 30-foot front (north) yard setback and 5.2 feet to 12.1 feet into the 24-foot side (north) yard open space. The drying shed encroaches 13.6 feet into the 30-foot front yard setback and the associated roof eave encroaches 8.1 feet into the front yard open space. The detached garage encroaches 20.7 to 21 feet into the front yard setback. The water tank 3.75 in height encroaches 25.90 feet into the front (east) yard setback and the second water tank 4.3 feet in height encroaches 15.20 feet into the side (south) yard setback.

The encroachment leaves the attached carport with a minimum 14.5-foot front (north) yard setback to a minimum 17.9-foot side (north) front yard setback, in lieu of the required 30-foot side yard setback and associated roof eave projection resulting with a 11.9-foot front (north) yard open space to a minimum of 18.80-foot (north) front yard open space in lieu of the required 24-foot open space requirement. It will also allow for the drying shed with a front yard setback of 16.40 feet and associated roof eave projection resulting in a 15.90-foot front yard open space, a detached garage with a front yard setback ranging from 9.00 to 9.30 feet, a 3.75 high water tank with a 4.90-foot front (south) yard setback in lieu of the minimum 30.00-foot front yard setback and 24 foot front yard open space requirement. It also leaves a 4.3-foot high water tank with a 4.80-foot side (east) yard setback.

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 front 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.

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 carport, drying shed and water tanks built upon the subject property (LOT 21) 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:

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, drying shed and water tanks 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-15-000289 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

Klaus D. Conventz  
Baumeister Consulting  
Page 7  
October 5, 2015

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

PLANNING DEPARTMENT  
OCT 17 10 28 AM '15  
**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: June 15, 2015

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

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-15-000289  
Applicant: KLAUS C. CONVENTZ/BAUMEISTER CONSULTING  
Lessor: B.P. BISHOP ESTATE  
Lessee: CHERRY A. BUCHOLZ/  
JEFFERY S. MCCASH (DECEASED)  
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 Front (North) Yard Setback)  
Tax Map Key: 7-8-016:007; Lot 21

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