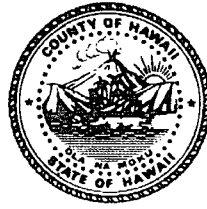


William P. Kenoi
Mayor



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
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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

October 8, 2015

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-15-000291
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Lessor: B.P. BISHOP ESTATE
Lessee: HAWAIIAN HOST, INC.
Request: Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into South and Southeast Rear Yard Setback).
TMK: 8-3-004:012; Lot F-2

The Planning Director certifies the **approval** of Variance No. 15-000291, subject to variance conditions. The variance will allow portions of open shed attached to a Quonset building to remain with a minimum 14.1-foot rear (southeast) yard setback and rear yard open space to a minimum 18.5-foot rear (southeast) yard setback and rear (southeast) yard open space. It also allows for a separate detached open shed with a minimum 15.5-foot rear (south) yard setback and rear (south) yard open space. These exceptions are in lieu of the required 30-foot rear yard setback and 24-foot rear 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 2.958 acres of land located in the Keokeo Subdivision lots and is situated at Ke'ei 1st, South Kona, Hawai'i. The subject property's street address is 83-5711 Lower Nāpō'opo'o Road.

2. **Zoning.** Agricultural – 5 acre. (A-5-a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 30 feet front and rear; 20 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on June 12, 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 two open sheds built into the rear yard setback and associated rear yard open space (southeast and south respectively).

The survey map shows that portions of an open shed attached to the Quonset building with encroachment ranges from 11.50 feet to 15.90 feet into the 30-foot rear (southeast) yard setback and 5.50 feet to 11.50 feet into the 24-foot rear (southeast) yard open space and it also shows a second detached open shed encroaching 14.5 feet into the 30-foot rear (south) yard setback and 8.5 feet into the 24-foot rear (south) yard open space.

These encroachments leave the open shed attached to the Quonset building with a minimum 14.1-foot to a minimum 18.5-foot rear (southeast) yard setback, and a minimum 5.50-foot to a minimum of 11.50-foot associated rear (southeast) yard open space. It also leaves the second detached shed minimum 15.50-foot rear (south) yard setback and a 15.50-foot rear (south) yard open space. These exceptions are in lieu of the required 30-foot rear yard setback and 24-foot rear yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that building permits (B23521 & B23522) were issued on August 8, 1960, for the factory building. A subsequent building permit (B06078) was issued on October 17, 1983 for the construction of a 3-bedroom and 2-bath single-family dwelling.
7. **Special Permit.** Special Permit 366 (SPP 77-000002) was issued on July 27, 1977 for the establishment of a macadamia nut processing plant. Subsequently, on March 19, 1986, Special Permit (366) (SPP 77-000002) was amended to allow for the establishment of a snack shop, display and sales area, Kona Coffee tasting area, macadamia nut candy making room, and five sales huts and related improvements.
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 notice(s) were mailed on June 12, 2015 and July 2, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on June 26, 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.
11. **Time Extension.** The applicant's variance application was received on June 12, 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 portions of an open shed attached onset building with encroachment ranges from 11.50 feet to 15.90 feet into the 30-foot rear (southeast) yard setback and 5.50 feet to 11.50 feet into the 24-foot rear (southeast) yard open space. It also shows that a second detached shed encroaches 14.5 feet into the 30-foot rear (south) yard setback and 8.5 feet into the 24-foot rear (south) yard open space.

These encroachments leave the open shed attached to the Quonset building a minimum 14.1-foot to a minimum 18.5-foot rear (southeast) yard setback, and a minimum 5.50-foot to a minimum of 11.50-foot associated rear (southeast) yard open space. It also leaves the second detached shed with a minimum 15.50-foot rear (south) yard setback and a 15.50-foot rear (south) yard open space.

These exceptions are in lieu of the required 30-foot rear yard setback and 24-foot rear yard open space.

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 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 open shed encroachments constructed into the affected southeast and south rear yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the open sheds 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 open sheds to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachments are within the rear 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.

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 no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the two sheds built on the subject property (LOT F-2) 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. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. 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.
5. Should the sheds 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-15-000291 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\VAR15-000291\TMK8-3-004-012HawaiianHost.doc.rtf

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

Klaus D. Conventz
Baumeister Consulting
Page 7
October 8, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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

MEMORANDUM

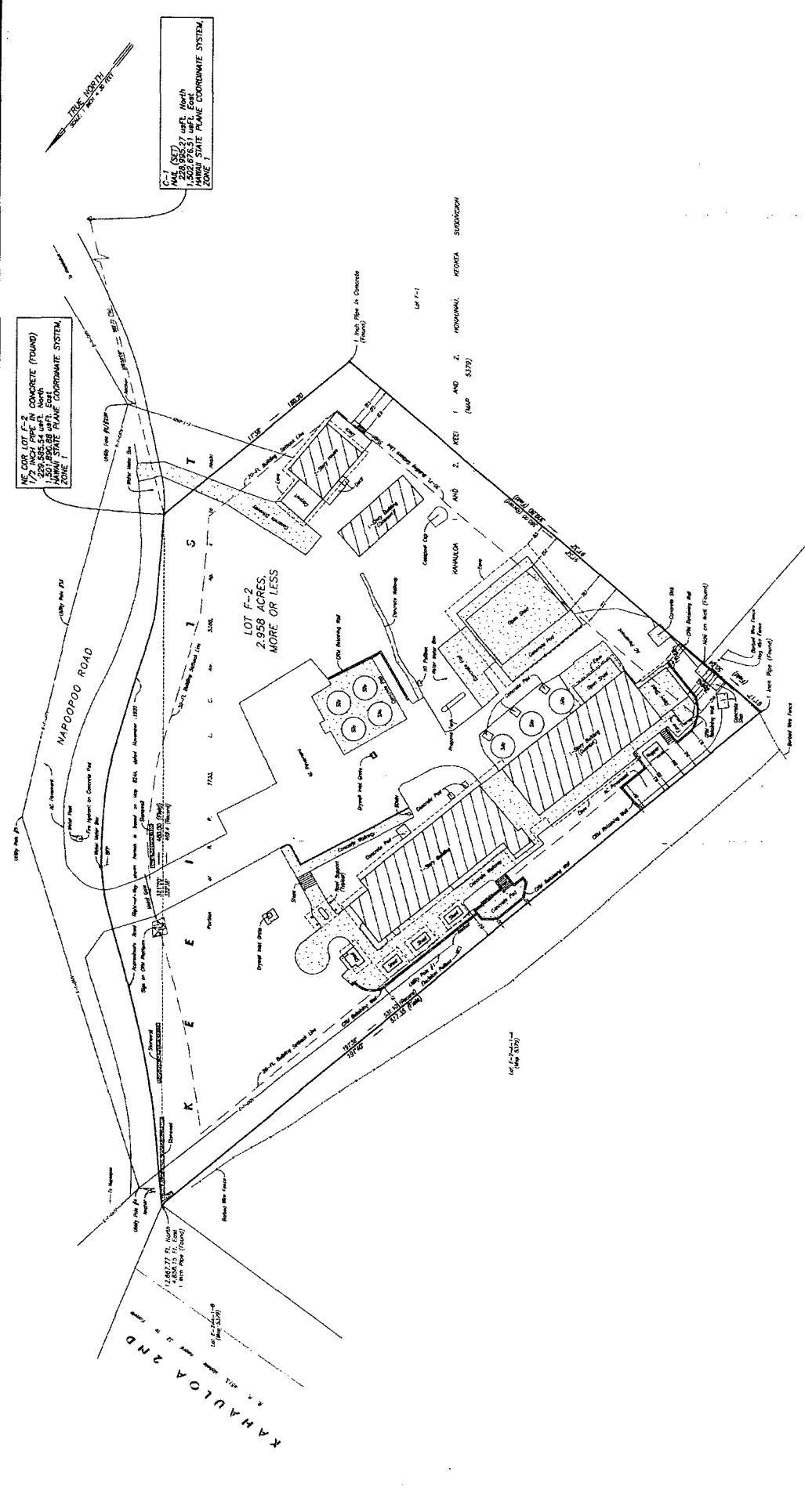
DATE: July 6, 2015

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

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 15-000291
Applicant: KLAUS D. CONVENTS/BAUMEISTER CONSULTING
Lessor: B.P. BISHOP ESTATES
Lessee: HAWAIIAN HOST INC.
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 Rear (South and Southeast)
Yard Setback and Rear (North) Yard Setback).
Tax Map Key: 8-3-004:012; Lot F-2

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



1/2" INCH SCALE
 1:2000
 1/2" INCH SCALE
 1:2000

1/2" INCH SCALE
 1:2000
 1/2" INCH SCALE
 1:2000

LOT F-2
 2.958 ACRES
 MORE OR LESS

AS-BUILT MAP SHOWING
 LOT F-2
 OF KAHALOLOA 1 AND 2, KEEI 1 AND 2, HONAUNAU, KEOKEA SUBDIVISION
 (MAP 5379)

Being a Portion of R. P. 7733, L. C. Aw. 5368, Ap. 4 to Akahi

At Keel 1st, South Kona
 Island and County of Hawaii, State of Hawaii

- NOTES:
1. Information shown on this map is based on the Survey of the Hawaiian Islands, U.S. Coast and Geodetic Survey, and is subject to the usual conditions of that survey.
 2. The horizontal distance between any two points on this map is based on the Hawaiian Islands, U.S. Coast and Geodetic Survey, and is subject to the usual conditions of that survey.
 3. The vertical distance between any two points on this map is based on the Hawaiian Islands, U.S. Coast and Geodetic Survey, and is subject to the usual conditions of that survey.
 4. The horizontal distance between any two points on this map is based on the Hawaiian Islands, U.S. Coast and Geodetic Survey, and is subject to the usual conditions of that survey.
 5. The vertical distance between any two points on this map is based on the Hawaiian Islands, U.S. Coast and Geodetic Survey, and is subject to the usual conditions of that survey.
- J. THOMAS ASSOCIATES
 2555 KALANANAKU AVENUE, SUITE 200
 HONOLULU, HAWAII 96815
 PHONE: (808) 521-1111
 FAX: (808) 521-1112
 WWW: WWW.JTHOMASASSOCIATES.COM



WES THOMAS ASSOCIATES
 This map was prepared by me or under my direct supervision.
 WES THOMAS
 PROFESSIONAL ENGINEER
 LICENSE NO. 15-4131
 EXPIRES APRIL 30, 2014

PROJECT NO. 152752
 DATE: 10/20/14
 FIELD BOOK NO. 1309
 DRAWING NO. F-2-004-012 (3RD DVISION)
 REVISIONS:
 REVISED: APRIL 8, 2015 (TECHNICAL CHANGES)
 REVISED: JUNE 4, 2015 (ADDED JOBBY)
 REVISED: JUNE 8, 2015 (ADDED JOBBY)