

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

October 9, 2015

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

Dear Mr. Conventz:

SUBJECT: VARIANCE APPLICATION – VAR-15-000306

Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING

Owner: JOHN J. KELLY JR. AND DIANE M. KELLY TRUSTS

Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards; (Encroachment into the South Side Yard Setback).

TMK: 7-7-020:062; Lot 16

The Planning Director certifies the **approval** of Variance No. 15-000306, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 7.85-foot side (south) yard setback to a minimum 7.91-foot side (south) side yard setback, in lieu of the required 10-foot side yard setback. These exceptions are in lieu of the required 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 10,257 square feet of land, is located in the Leilani Sunset Subdivision, situated at Holualoa 3rd, North Kona, Hawai'i. The subject property's street address is 77-6417 Leilani Street
2. **Zoning.** Single-Family Residential – 10,000 square feet (RS-10).
3. **State Land Use.** Urban.
4. **Required Setback.** Front and Rear – 20 feet; Sides – 10 feet.
5. **Variance Application-Site Plan.** The applicant submitted the variance application,

attachments, and filing fee on June 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 Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc), denotes the portions of the single-family dwelling built into the side (south) yard setback.

The survey map shows that the portion of the single-dwelling encroaches 2.09 to 2.15 feet into the 10-foot side (south) yard setback.

The encroachment leaves a minimum 7.85-foot side (south) yard setback to a minimum 7.91-foot side (south) yard setback in lieu of the required 10-foot side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (955530) was issued on June 15, 1995, for the construction of a 3-bedroom and 2-bath, single-family dwelling. A subsequent building permit (955717) was issued on November 31, 2015 for the construction of an in ground swimming pool.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated September 29, 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 August 28, 2015 and September 15, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on September 11, 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.

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 portion of the single-dwelling encroaches 2.09 to 2.15 feet into the 10-foot side (south) yard setback.

The encroachment leaves a minimum 7.85-foot side (south) yard setback to a minimum 7.91-foot side (south) yard setback in lieu of the required 10-foot side yard setback.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the screened lanai and storage shed encroachment problems to occur.

It appears that the single-family dwelling constructed nearly 20 years ago was 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 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 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 screened lanai encroachment constructed into the affected rear yard setback and storage shed encroachments constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family dwelling 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 single-family dwelling was in compliance with all County requirements. Also, any structural or design correction to 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 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. As such, it is 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 Property Owners.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built upon the subject property (LOT 16) will not meet the minimum side yard setback 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

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Baumeister Consulting
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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 an ohana dwelling and/or a farm dwelling upon the subject property.
4. Should the single-family dwelling 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-15-000306 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR15-000306TMK7-7-020-062 Kelly Trust.doc.rtf

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

Klaus D. Conventz
Baumeister Consulting
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DAVID Y. IGE
GOVERNOR OF HAWAII



AM 10 24

DEPARTMENT
OF HEALTH
COUNTY 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: September 29, 2015

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

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

SUBJECT: Application: Variance VAR-15-000306
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: JOHN J. KELLY FR., AND DIANE M. KELLY TRUSTS
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards. (Encroachment into Side
(South) Yard Setback)

TMK: 7-7-020:062, Lot 16

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

WORD: VAR-15-000306.eh

101166

MAP SHOWING EXISTING CONDITIONS UPON LOT NO. 16

of "LEILANI SUNSET SUBDIVISION" Sub. Map No. 4343
 Being a Portion of Royal Patent 1591 to Hoolawahouua at Holiualoa 3rd,
 North Kona, County of Hawaii Island of Hawaii and State of Hawaii
 TMK No. (3) 7-7-020:062

NOTE: BASIS OF AZIMUTH DERIVED
 FROM SORA GPS RTK SYSTEM

NOTE: ALL CORNERS ARE FOUND
 4" IRON PIPES IN CONCRETE
 UNLESS OTHERWISE NOTED

NOTE: ALL AZIMUTHS & DISTANCES
 ARE SHOWN & IMPRINTED HEREON
 IN A CLOCKWISE DIRECTION

NOTES:

- 1) No boundary encroachments were found.
- * 2) Violations of County zoning set-back codes were found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on August 6th, 2015.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry Wall.

Setback Lines are shown from current data, but should be verified by builder. The description on the plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title. All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local building codes, no responsibility is assumed by Surveyor. Compare all points before building and record necessary discrepancy at once. Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.

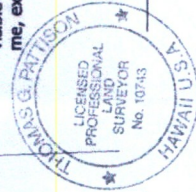
TRUE NORTH



SCALE ONE INCH
 EQUALS 20.00 FEET
 Graphical Scale is in Feet



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 hereon.



THOMAS G. PATTISON
 Hawaii License No. 10743
 August 12th, 2015—Job 15329

68-1125 North Kaniku Drive • Unit 906
 Kamuela Hawaii 96743 Phone 327-9439

PATTISON LAND SURVEYING, INC.

