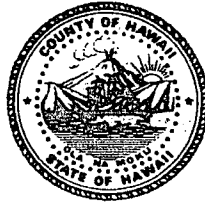


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
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Phone (808) 961-8288
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November 10, 2015

Klaus D. Conventz
dba Baumeister Consulting
PO Box 2308
Kailua-Kona, HI 96745

Dear Mr. Conventz:

SUBJECT: Application: Variance - VAR-15-000308
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: COLBERT T. NOZAKI AND DORIS K. NOZAKI TRUSTS
Request: Variance from Chapter 25, Zoning, Article 5, Division 2, Section 25-5-26, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements, and Section 25-4-47, Minimum distance between main buildings on same building site. (Encroachment into Front (North) Yard Setback and Rear (South) Yard Setback)

Tax Map Key: 7-5-018:045; Lot 28

The Planning Director certifies the **approval** of Variance No. 15-000308, subject to variance conditions. The variance will allow portion of the front single-family dwelling to remain with a minimum 9.69-ft. front (north) yard open space to a minimum 9.93-ft. front (north) yard open space, in lieu of the required 10-ft. front yard open space and the detached rear carport with a minimum 8.21-ft. rear (south) yard open space in lieu of the required 10-ft. rear yard open space. It will also allow for the two single-family dwellings to be 11.6-ft. apart in lieu of the required 15-ft. distance between main buildings. These exceptions are in lieu of the required 10-ft. front yard open space required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-44 (a), permitted projections into Yards and Open Space Requirements and Section 25-4-47, minimum distance between main buildings on same building site.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 11,223 square feet of land, is located in the Konalani Subdivision, situated at Kailua, North Kona, Hawai'i. The subject property's street address is 75-160 Lunapule Road.
2. **Zoning.** Residential Duplex – 3,750 square feet (RD-3.75)

3. **State Land Use.** Urban.
4. **Required Setback.** Front and Rear – 15-ft., Sides – 8-ft.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 12, 2015, and other submittals related to the variance request and variance application. The variance application's revised site plan, dated October 22, 2015, drawn to scale and prepared by Thomas G. Pattison, LPLS, (Pattison Land Surveying, Inc.), denotes the portions of the single-story dwelling roof eave into the front (north) yard open space, the detached open carport roof eave into the rear (south) yard open space and the distance between the two main dwellings.

The survey map shows that the portion of the front single-story dwelling encroaches 0.07-ft. to 0.31-ft. into the 10-ft. front (north) yard open space, the detached rear carport encroaches 1.79-ft. into the 10-ft. rear (south) yard setback.

The encroachment leaves a minimum 9.69-ft. front (north) yard open space to a minimum 9.93-ft. front (north) yard open space in lieu of the required 10-ft. front yard open space and the rear detached carport with a minimum 8.21-ft. rear (south) yard open space. It also leaves a minimum 11.6-ft. between the two single-family dwellings.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (#895880) was issued on July 21, 1989, for the construction of a 2-bedroom and 1-bath, single-family dwelling. A subsequent building permit (B2010-0780K) was issued on September 14, 2010, for additions and alterations.

7. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum, dated October 8, 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 USPS. According to these submittals, the first and second notices were mailed on September 11 and October 6, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on September 30, 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 front single-story dwelling encroaches 0.07-ft. to 0.31-ft. into the 10-ft. front (north) yard open space, the detached rear carport encroaches 1.79-ft. into the 10-ft. rear (south) yard setback.

The encroachment leaves a minimum 9.69-ft. front (north) yard open space to a minimum 9.93-ft. front (north) yard open space in lieu of the required 10-ft. front yard open space and the rear detached carport with a minimum 8.21-ft. rear (south) yard open space. It also leaves the two single-family dwellings to be 11.6-ft. apart.

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

It appears that the single-family dwelling and carport constructed nearly 46 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 owners were unaware of any problems until an "as-built" survey was conducted on August 29, 2015.

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 dwellings and the detached open carport roof eaves 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 and the detached open carport to meet setback requirement and required distance between two main dwelling would leave unattractive reconstruction scars.

Because the encroachments are within the front yard setback, to consolidate the subject property with the roadway 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 structures/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 28) will not meet the minimum front and rear 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 an ohana dwelling and/or a farm dwelling upon the subject property.
4. Should the single-family dwellings and detached 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.

Klaus D. Conventz
Baumeister Consulting
Page 6
November 10, 2015

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000308 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:lnm

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Att.: DOH comments (10/08/15)

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

Klaus D. Conventz
Baumeister Consulting
Page 7
November 10, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

2015 OCT 12 PM 3 03

PLANNING DEPARTMENT
COUNTY OF HAWAII

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

MEMORANDUM

DATE: October 8, 2015

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

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

SUBJECT: Application: Variance VAR-15-000308
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: COLBERT T. NOZAKI AND DORIS K. NOZAKI TRUSTS
Request: Variance from Chapter 25, Zoning, Article 5, Division 2,
Section 25-5-26, Minimum Yards and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (North) Yard
Setback and Rear (South) Yard Setback.
TMK: 7-5-018:045, Lot 28

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

WORD: VAR-15-000308.ch

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