

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

November 10, 2015

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

Dear Mr. Conventz:

**SUBJECT: Application: VARIANCE – VAR-15-000309**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: ROBERT AND MARY BYRNE TRUST**  
**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 the Northeast Side**  
**Yard Setback)**  
**Tax Map Key: 8-2-009:118; (Lot 65)**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-15-000309, subject to variance conditions. The variance will allow portion or the existing attached garage to remain on the subject property with an 18.70-ft. side (northeast) yard setback, in lieu of the required 20-ft. side yard setback. This allowance is in lieu of the minimum 20-ft. side yard setback requirement in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum Yards.

**BACKGROUND AND FINDINGS**

- 1. Location.** The subject property consists of approximately 1.07 acres of land and is located in the McCoy Plantation, situated at Kalamakowali Homesteads, South Kona, Hawai'i. The subject property's street address is 82-896 Coffee Drive.
- 2. County Zoning.** Agricultural – 1 acre (A-1a).
- 3. State Land Use.** Agricultural.

**4. Setback Requirements:** 30-ft. for front and rear, 20-ft. sides.

**5. Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on September 1, 2015. The variance application's site plan map is drawn to scale and was prepared by Thomas G. Pattison, LPLS, (Pattison Land Surveying, Inc.), denotes the portions of the attached garage into the northeast side yard setback.

The survey map prepared by Thomas G. Pattison, LPLS, of Pattison Land Surveying, Inc. shows that portions of the attached garage encroaches 1.3-ft. into the 20-ft. side (northeast) yard setback.

The encroachment leaves a minimum 18.70-ft. side (northeast) yard setback in lieu of the required 20-ft. side yard setback.

**6. County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (#985871) was issued on August 12, 1998, for the construction of a 5-bedroom, 3-bathroom and 2-half bath, single-family dwelling.

**7. Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated October 9, 2015. (See attached)
- b. No comments have been received from Department of Public Works – Building Division.

**8. Public Notice.** 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 Hawaii Tribune Herald and West Hawaii Today on February 24, 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.

## **GROUNDNS FOR APPROVING VARIANCE**

### **Special and Unusual Circumstances**

- (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 owner/applicant submitted the variance application to address or resolve the encroachment of the attached garage into the 20-ft. side (northeast) yard setback as required by the Zoning Code.

The survey map prepared by Thomas G. Pattison, LPLS, of Pattison Land Surveying, Inc., shows that portion of the attached garage encroaches 1.3-ft. into the 20-ft. side (northeast) yard setback.

The encroachment leaves a minimum 18.70-ft. side (northeast) yard setback in lieu of the required 20-ft. side yard setback.

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. It appears that the single-family dwelling, with garage constructed in 1998 nearly 17 years ago, was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements 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 subject property.

### **Alternatives**

- (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 building encroachments constructed into the affected front yard setback and open space 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.

Both of these alternatives are not practical; therefore, there are no other reasonable alternatives to resolve these encroachment issues.

### **Intent and Purpose**

*(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 welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

### **The variance application meets criterion (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.

The encroachment of the attached garage of 1.70-ft. into the 20-ft. side (northeast) yard setback still allows for adequate air circulation.

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 this office did not

receive any complaint from surrounding property owners during the past 17 years of existence of the attached garage.

Furthermore, objections were not received from the adjacent owner, the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the certified kitchen and carport built upon the subject property (LOT 65) will not meet the minimum side yard setback and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 related to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code's minimum side yard setback requirement. The approval of this variance allows the existing garage to remain on the subject property, pursuant to the variance application's site plan map.
4. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
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 building 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-15-000309 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written over a horizontal line.

DUANE KANUHA  
Planning Director

LHN:lnm

P:\Admin Permits Division\Variances From CoH02\Zone8\VAR15-000309TMK8-2-009-118ByrneTrust 11-10-15.doc

Att.: DOH comments (10/09/15)

xc: Planning Department-Kona  
Randy Lavato, Zoning Inspector (Kona)  
Real Property Tax Office-Kona  
Gilbert Bailado, GIS (via email)

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

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

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 9, 2015

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

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

SUBJECT: Application: Variance VAR-15-000309  
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING  
Owner: ROBERT & MARY BRYNE TRUST  
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 the Northeast  
Side Yard Setback).

TMK: 8-2-009:118, Lot 65

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

WORD: VAR-15-000309.ch

101345