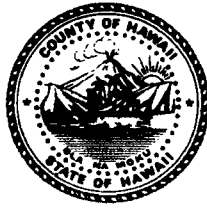


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
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

June 16, 2016

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

Dear Mr. Conventz:

**SUBJECT: Application: Variance – VAR-15-000326-Revised**  
**Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING**  
**Owner: JOHN EICHELBARGER TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements. (Encroachment into the Front [Northeast] Yard Setback)**

**Tax Map Key: 7-5-039:042, Lot 118**

The Planning Director certifies the **approval** of Variance No. 15-000326-Revised, subject to variance conditions. The variance will allow portion of the garage to remain with a minimum 12.6-foot front (northeast) yard setback to a minimum 13.8-foot front (northeast) front yard setback, in lieu of the required 15-foot front yard setback. It will also allow for the roof eave of the porch/lanai entry to remain with a 7.70-foot front yard open space in lieu of the required 10-foot front yard open space. These exceptions are in lieu of the required 15-foot front yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

This revised variance (Variance 15-000326-Revised) will allow for the single-family dwelling to remain with a minimum 0.10-foot to a minimum 0.20-foot front (northeast) yard setback, in lieu of the required 15-foot front yard setback. This encroachment was not addressed under the previous variance (Variance 15-000326).

**BACKGROUND AND FINDINGS**

1. **Location:** The subject property, consisting of approximately 4,590 square feet of land, is

located in the Malulani Subdivision, situated at Keopu 2nd, North Kona, Hawai'i. The subject property's street address is 75-279 Malulani Drive.

2. **Zoning:** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use:** Urban.
4. **Required Setback:** 15-ft. front and rear, 5-ft. for sides – Per PUD 51 (PUD 94-01).
5. **Variance Application-Site Plan:** The applicant submitted the variance application, attachments, and filing fee on September 11, 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, LPLS, (Wes Thomas and Associates), denotes the portions of the enclosed garage encroaching into the front (northeast) yard setback and the roof eave of the porch/lanai entry into the front yard open space.

The survey map shows that the portion of the enclosed garage encroaches 1.20 feet to 2.40 feet into the 15-foot front (northeast) yard setback and the roof eave of the porch/lanai entry encroaches 2.30 feet into the 10-foot front (northeast) yard open space. It also shows that the single-family dwelling encroaches with a minimum 0.10-foot to a minimum 0.20-foot into the front (northeast) yard setback.

The encroachment leaves a minimum 12.6-foot front (northeast) yard setback to a minimum 13.8 foot front (northeast) front yard setback, in lieu of the required 15-foot front yard setback requirement. It also leaves roof eave of the porch/lanai entry encroaches 7.70-foot into the front yard open space, in lieu of the required 10-foot front open space requirement.

The encroachment of the single-family dwelling leaves a minimum 14.9-foot front (northeast) yard setback to a minimum 14.8 foot front (northeast) front yard setback, in lieu of the required 15-foot front yard setback requirement.

This variance request is unique to this particular property and was not part of the PUD.

6. **County Building Records:** Hawai'i County Real Property Tax Division records indicate that a building permit (B016254) was issued on September 14, 2001, for the construction of a 2-bedroom and 2-bath, single-family dwelling.
7. **Planned Unit Development:** PUD-51 (PUD 94-01) issued on September 15, 1994 for the development of a 121 unit Single Family Residential Subdivision.
8. **Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum, dated November 18, 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 USPS. According to these submittals, the first and second notices were mailed on July 15, 2015 and November 14, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 25, 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.

#### 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 enclosed garage encroaches 1.20 feet to 2.40-feet into the 15-ft. front (northeast) yard setback. It also shows that the roof eave of the porch/lanai entry encroaches 2.30 feet into the 10.00 feet front (northeast) yard open space.

The encroachment leaves a minimum 12.6 foot front (northeast) yard setback to a minimum 13.8- foot front (northeast) front yard setback, in lieu of the required 15-foot front yard setback requirement. It also leaves roof eave of the porch/lanai entry encroaches 2.30 feet into the front yard open space, in lieu of the required 10-foot front open space requirement.

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

It appears that the enclosed garage and the porch/lanai constructed nearly 14 years ago were constructed under valid building permits and other construction permits issued by the County. Also, it 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 open lanai encroachment constructed into the affected front yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the enclosed garage and porch/lanai 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 open lanai was in compliance with all County requirements. Also, any structural or design correction to the open lanai to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachments are within the front yard open space, to consolidate the subject property with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard open space 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.

The encroachment of the enclosed garage, resulting with a minimum of 12.6-foot front yard setback to a minimum 13.8-foot front yard setback, still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

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 open lanai built upon the subject property (LOT 118) will not meet the minimum front yard 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. Should the enclosed garage and porch/lanai 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.
4. 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  
dba Baumeister Consulting  
Page 6  
June 16, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000326-Revised null and void.

Sincerely,

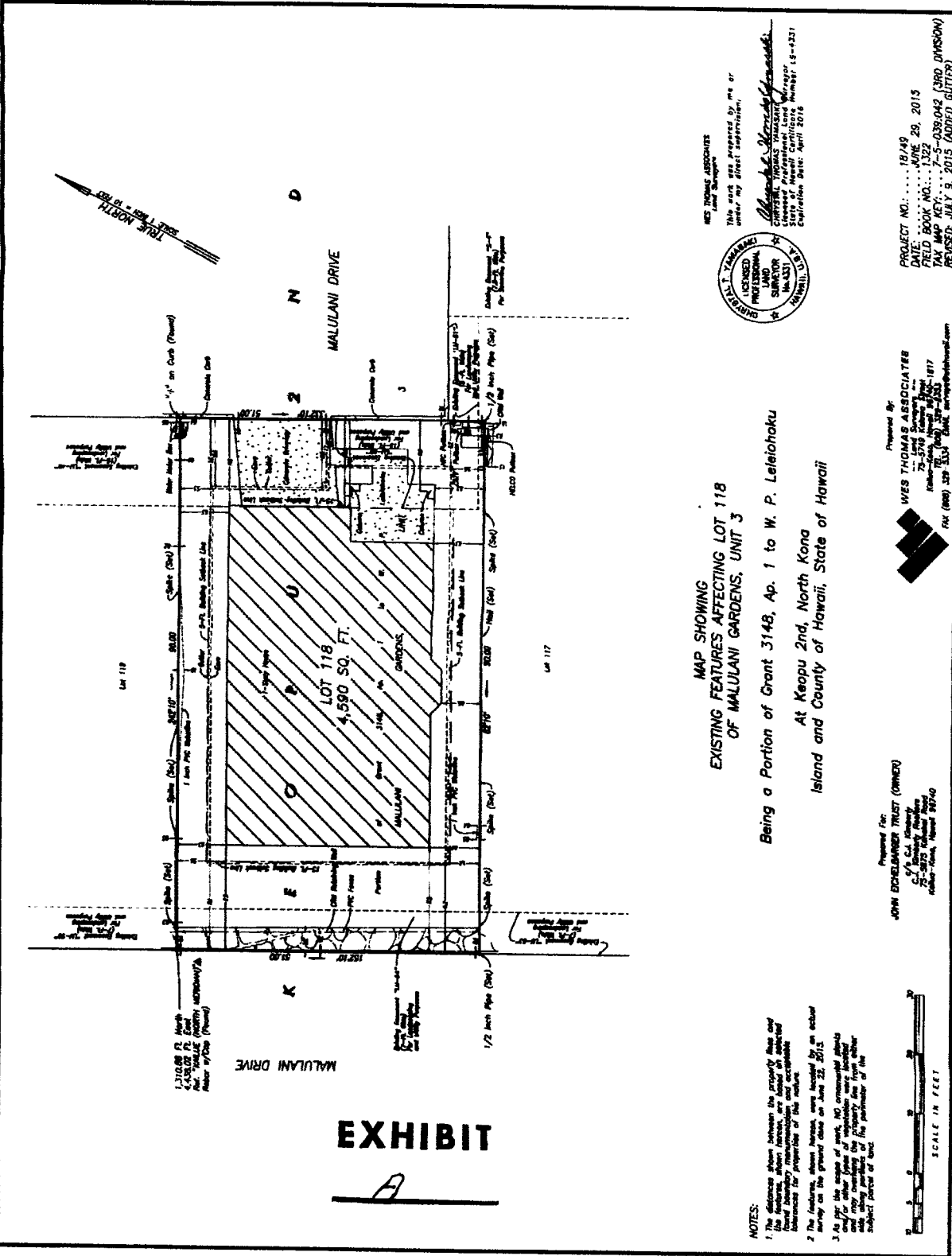


**DUANE KANUHA**  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR15-000326-Revised\TMK7-5-039-042 Echelbarger Trust 11-10-15.doc

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





NOV 20 PM 3 41  
HEALTH DEPARTMENT  
COUNTY OF HAWAII

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

MEMORANDUM

DATE: November 18, 2015

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

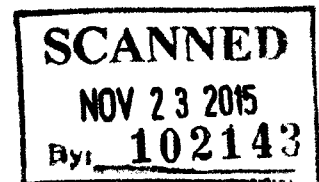
FROM: Eric Honda *EH*  
District Environmental Health Program Chief

SUBJECT: **Application: Variance – VAR-15-000326**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owner: JOHN EICHELBARGER TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the Northeast Front Yard Setback)**  
**Tax Map Key: 7-5-039:042; Lot 118**

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

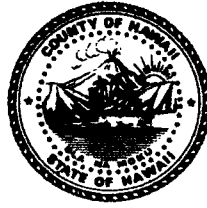
**EXHIBIT**

B





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

December 29, 2015

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

Dear Mr. Conventz:

**SUBJECT: Application: Variance – VAR-15-000326**  
**Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING**  
**Owner: JOHN EICHELBARGER TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements. (Encroachment into the Front [Northeast] Yard Setback)**  
**Tax Map Key: 7-5-039:042, Lot 118**

---

The Planning Director certifies the **approval** of Variance No. 15-000326, subject to variance conditions. The variance will allow portion of the garage to remain with a minimum 12.6-foot front (northeast) yard setback to a minimum 13.8-foot front (northeast) front yard setback, in lieu of the required 15-foot front yard setback. It will also allow for the roof eave of the porch/lanai entry to remain with a 7.70-foot front yard open space in lieu of the required 10-foot front yard open space. These exceptions are in lieu of the required 15-foot front yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, 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 4,590 square feet of land, is located in the Malulani Subdivision, situated at Keopu 2nd, North Kona, Hawai'i. The subject property's street address is 75-279 Malulani Drive.
2. **Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use.** Urban.

4. **Required Setback.** 15-ft. front and rear, 5-ft. for sides – Per PUD 51 (PUD 94-01)
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on September 11, 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, LPLS, (Wes Thomas and Associates), denotes the portions of the enclosed garage encroaching into the front (northeast) yard setback and the roof eave of the porch/lanai entry into the front yard open space.

The survey map shows that the portion of the enclosed garage encroaches 1.20 feet to 2.40 feet into the 15-foot front (northeast) yard setback and the roof eave of the porch/lanai entry encroaches 2.30 feet into the 10-foot front (northeast) yard open space.

The encroachment leaves a minimum 12.6 foot front (northeast) yard setback to a minimum 13.8 feet front (northeast) front yard setback, in lieu of the required 15-foot front yard setback requirement. It also leaves roof eave of the porch/lanai entry encroaches 2.30 feet into the front yard open space, in lieu of the required 10-foot front open space requirement.

This variance request is unique to this particular property and was not part of the PUD.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B016254) was issued on September 14, 2001, for the construction of a 2-bedroom and 2-bath, single-family dwelling.
7. **Planned Unit Development:** PUD-51 (PUD 94-01) issued on September 15, 1994 for the development of a 121 unit Single Family Residential Subdivision.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated November 18, 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 USPS. According to these submittals, the first and second notices were mailed on July 15, 2015 and November 14, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 25, 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.

**ANALYSIS OF GROUNDS FOR VARIANCE**

**No variance will be granted unless it is found that:**

***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 enclosed garage encroaches 1.20 feet to 2.40-feet into the 15-ft. front (northeast) yard setback. It also shows that the roof eave of the porch/lanai entry encroaches 2.30 feet into the 10.00 feet front (northeast) yard open space.

The encroachment leaves a minimum 12.6 foot front (northeast) yard setback to a minimum 13.8 feet front (northeast) front yard setback, in lieu of the required 15-foot front yard setback requirement. It also leaves roof eave of the porch/lanai entry encroaches 2.30 feet into the front yard open space, in lieu of the required 10-foot front open space requirement.

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

It appears that the enclosed garage and the porch/lanai constructed nearly 14 years ago were constructed under valid building permits and other construction permits issued by the County. Also, it 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.

***(a) 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 lanai encroachment constructed into the affected front yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the enclosed garage and porch/lanai 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

open lanai was in compliance with all County requirements. Also, any structural or design correction to the open lanai to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachments are within the front yard open space, to consolidate the subject property with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard open space are not viable options. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

***(b) 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.

The encroachment of the enclosed garage, resulting with a minimum of 12.6-foot front yard setback to a minimum 13.8-foot front yard setback, still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

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 open lanai built upon the subject property (LOT 118) will not meet the minimum front yard 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. Should the enclosed garage and porch/lanai 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.
4. 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-15-000326 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR15-000326TMK7-5-039-042 Echelbarger Trust 11-10-15.doc

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

Klaus D. Conventz  
dba Baumeister Consulting  
Page 6  
December 29, 2015

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

NOV 20 PM 3:41

PLANNING DEPARTMENT  
COUNTY OF HAWAII

**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P.O. BOX 316  
HILO, HAWAII 96721-0316

MEMORANDUM

**DATE:** November 18, 2015

**TO:** Mr. Duane Kamahe  
Planning Director, County of Hawaii

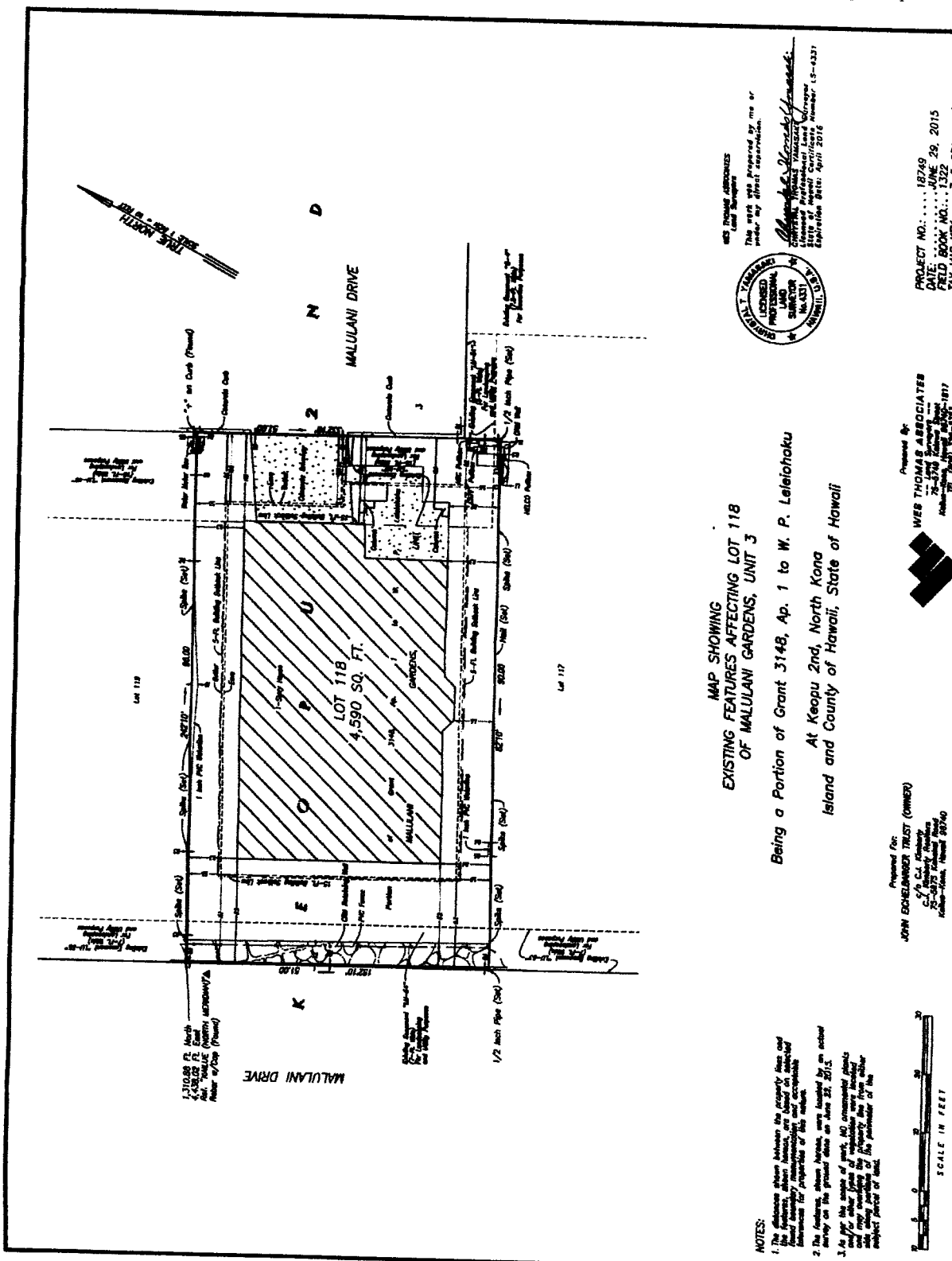
**FROM:** Eric Honda *eh*  
District Environmental Health Program Chief

**SUBJECT:** **Application:** Variance - VAR-15-000326  
**Applicant:** KLAUS D. CONVENTZ/BAUMEISTER CONSULTING  
**Owner:** JOHN EICHELBERGER TRUST  
**Request:** Variance from Chapter 25, Zoning, Article 5 Division 1,  
Section 25-5-7 Minimum Yards and Article 4, Division 4,  
Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements (Encroachment into the Northeast  
Front Yard Setback)  
**Tax Map Key: 7-5-039:042; Lot 118**

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

WORD: TMK: 7-5-039:042; Lot 118.ch

102143



MAP SHOWING  
EXISTING FEATURES AFFECTING LOT 118  
OF MALLUANI GARDENS, UNIT 3

Being a Portion of Grant 3148, Ap. 1 to W. P. Leleiohaku  
At Keolu 2nd, North Kona  
Island and County of Hawaii, State of Hawaii

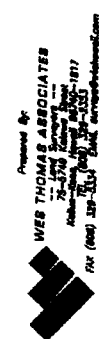
NOTES:  
1. The distances shown between the property lines and the centerlines of the utility lines are not intended to show any responsibility for the utility lines.  
2. The features, shown herein, were located by an actual survey on the ground date on June 22, 2015.  
3. As per the scope of work, NO concealed obstructions or other items were located. The surveyor is not responsible for the discovery of any other subject matter of title.



WES THOMAS ASSOCIATES  
Civil Engineers  
This work was prepared by me or under my direct supervision.  
*Wesley Thomas*  
Professional Engineer License No. 1322  
Expiration Date: April 2016, Renewal LS-4337



Prepared For:  
JOHN SCHEIDTNER TRUST (OWNER)  
570 E. Kilauea Ave.  
Keolu, Hawaii 96750  
Phone: (808) 935-2200  
Fax: (808) 935-2201  
Email: wes@wes-thomas.com



Prepared By:  
WES THOMAS ASSOCIATES  
1111 Kilauea Ave.  
Keolu, Hawaii 96750  
Phone: (808) 935-2200  
Fax: (808) 935-2201  
Email: wes@wes-thomas.com

PROJECT NO.: 18740  
DATE: JUNE 29, 2015  
FIELD BOOK NO.: 1322  
TAX MAP KEY: 7-5-039-042 (3RD DIVISION)  
REVISED: JULY 9, 2015 (ADDED GUTTER)