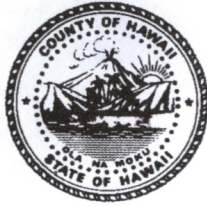


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
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June 21, 2016

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

Dear Mr. Conventz:

SUBJECT: Application: Variance - VAR 15-000336
Applicant: KLAUS CONVENTZ/BAUMEISTER CONSULTING
Owner: JERRY D. NELSON
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 North and East Side Yard Setback)

Tax Map Key: 7-7-021:071; Lot 71

The Planning Director certifies the **approval** of Variance No. 15-000336, subject to variance conditions. The variance will allow portions of the attached shed to remain with a minimum 9.3-foot side (north) yard setback to a minimum 9.4-foot side (northeast) yard setback, in lieu of the required 10-foot side (north) yard setback. It will also allow for the proposed conversion of the open carport to an enclosed family-room to remain with a minimum 5-foot side (east) yard setback to a minimum of 5.20-foot side (east) yard setback, in lieu of the required 10-foot side yard setback and associated roof eave projection, resulting with a 4.0-foot side (east) yard open space to a minimum 4.20-foot side (east) yard open space, in lieu of the required 5-foot side yard open space requirement.

The survey map also referenced an encroachment of the CRM Wall with wooden fence into Halawai Street a County of Hawai'i right-of-way. The CRM Wall with wooden fence is excluded from this variance approval, as separate action is required by the County of Hawai'i Department of Public Works.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 15,000 square feet of land, is located in the Komohana Kai Subdivision, situated at Holualoa 1, 2 & 3, North Kona, Hawai'i. The subject property's street address is 77-199 Kekai Street.
2. **Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use.** Urban.
4. **Required Setback.** 20-feet for the front; 10-feet for sides; Section 25-4-42, Corner building sites: (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on December 4, 2015, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Peter H. Souza Jr., LPLS, (Crossroads Land Surveying LLC), denotes the portions of the carport and attached shed built into the side (north and east) yard open space.

The site plan shows that portion of the attached shed encroaches 0.70 feet (8.4 inches) to 0.60 feet (7.20 inches) into the 10-foot side (north) yard setback. It also shows that the proposed conversion of the exiting open carport to an enclosed family-room will encroach 4.80-feet to 5-feet into the 10-foot side (east) yard setback and the associated roof eave encroaches 0.80 feet to 1-foot into the 5-foot side (east) yard open space.

The encroachment leaves the attached shed with a minimum 9.30-foot side (north) yard setback to a minimum 9.40-foot side (north) yard setback, in lieu of the required 10-foot side (north) yard setback. It also leaves the proposed conversion of the open carport to an enclosed family room with a minimum 5-foot side (east) yard setback to a minimum of 5.20-foot side (east) yard setback in lieu of the required 10-foot side yard setback and associated roof eave projection, resulting with a 4-foot side (east) yard open space to a minimum 4.80-foot side (east) yard open space in lieu of the required 5-foot side yard open space requirement. (See Exhibit A-Site Plan)

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (881034) was issued on June 17, 1988, for the construction of a 3-bedroom and 2.5-bath, single-family dwelling. A subsequent building permit (915217) was issued on February 25, 1991 for an in-ground swimming pool.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated December 17, 2015.

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

- 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 December 4, 2015 and December 23, 2015, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on December 28, 2015.
9. **Time Extension.** The applicant’s variance application was acknowledged by letter dated December 15, 2015 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to June 21, 2016.
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 site plan shows that portion of the attached shed encroaches 0.70 feet (8.4 inches) to 0.60 feet (7.20 inches) into the 10-foot side (north) yard setback. It also shows that the propped conversion of the open carport to an enclosed family-room will encroach 4.80-feet to 5-feet into the 10-foot side (east) yard setback and the associated roof eave will encroach 0.80 feet to 1-foot into the 5-foot side (east) yard open space.

The encroachment leaves the attached shed with a minimum 9.30-foot side (north) yard setback to a minimum 9.40-foot side (north) yard setback, in lieu of the required 10-foot side (north) yard setback. It will also leave the conversion of the exiting open carport into an enclosed family room with a minimum 5-foot side (east) yard setback to a minimum of 5.20-foot side (east) yard setback in lieu of the required 10-foot side yard setback and associated roof eave projection

resulting with a 4-foot side (east) yard open space to a minimum 4.20-foot side (east) yard open space in lieu of the required 5-foot side yard 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 single-family dwelling constructed nearly 27 years ago was 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 criteria (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 attached shed 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, redesigning the proposed family room to meet setback requirement will require the owner to construct a smaller version of the proposed family-room and would diminish the overall functionality of the proposed improvement.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

(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 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 attached shed and family-room built upon the subject property (LOT 71) 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. Should the attached shed and family-room on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code,


Klaus D. Conventz
dba Baumeister Consulting
Page 6
June 21, 2016

Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

4. An Ohana or Farm Dwelling permit shall not be granted 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.
5. Existing landscape of trees along the side (east) boundary shall remain as long as the encroachment of the family-room exists and shall be maintained in a manner conducive to their health and growth.
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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000336 null and void.

Sincerely,



DUANE KANUHA
Planning Director

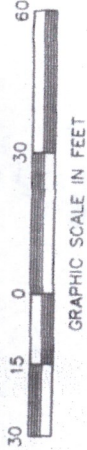
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xc: Planning Department-Kona
Real Property Tax Division-Kona
Gilbert Bailado, GIS (via email)

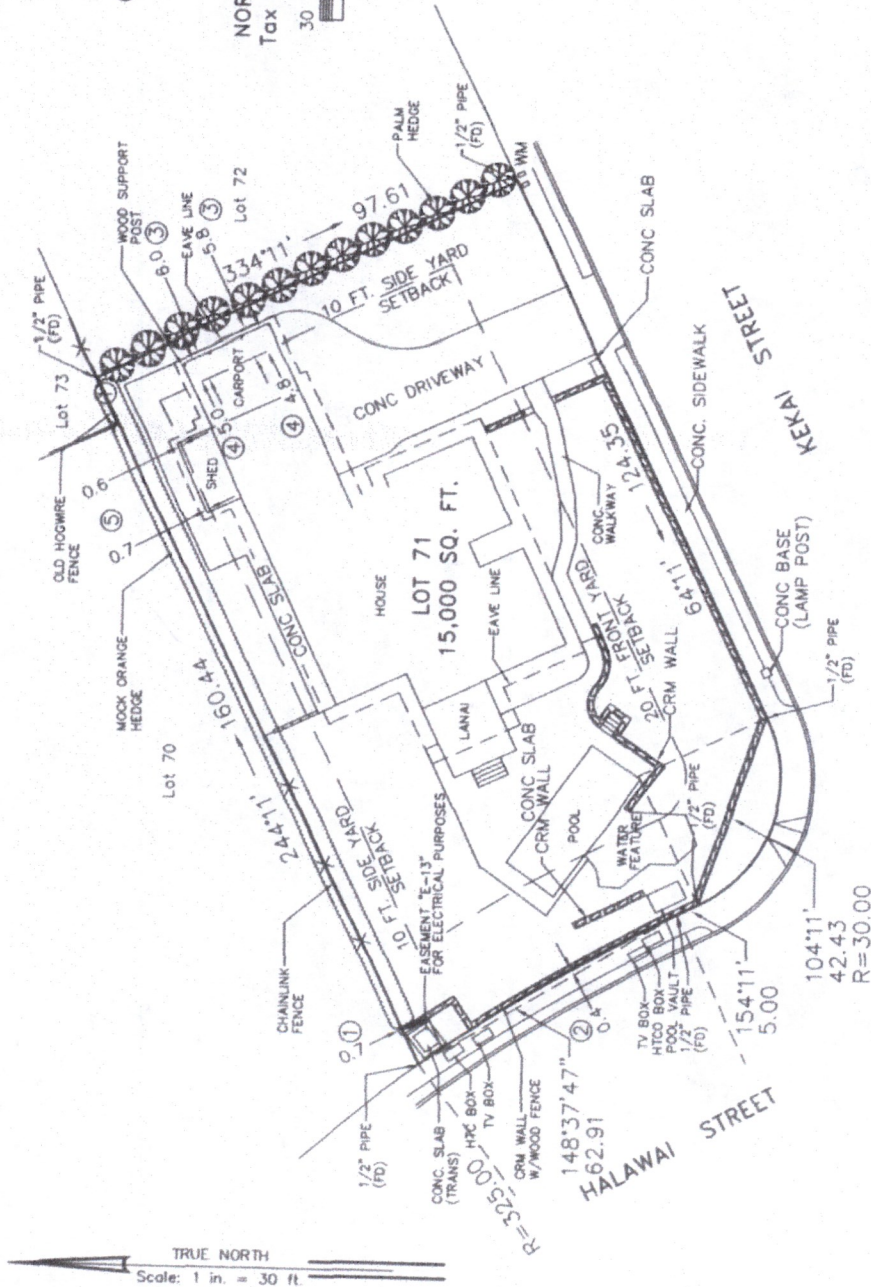
PLAN SHOWING
LOT 71
OF KOMOHANA KAI, UNIT II
(F.P. 1737)

AT HOUALOA 1, 2 & 3,
NORTH KONA, ISLAND OF HAWAII, HAWAII
Tax Map Key (3rd. Division): 7-7-21: 71



This work was prepared by me
or under my direct supervision

By: *[Signature]*
Peter H. Souza Jr.
Licensed Professional Surveyor
Certificate Number 9279



SURVEYOR'S CERTIFICATION:

The undersigned hereby certifies that on October 29, 2015, the subject lot was surveyed and corners marked on the ground. There are no overlaps or improvements crossing over boundary lines other than those shown on this map.

Notes:
1. Map is compiled from records found at the State Survey Office, County of Hawaii Planning Department, State of Hawaii Bureau of Conveyances.

EXHIBIT

A

Job Number: 2015-089
October 29, 2015

CROSSROADS LAND SURVEYING
Land Surveyors

P.O. Box 9017
Kailua-Kona, Hawaii 96745