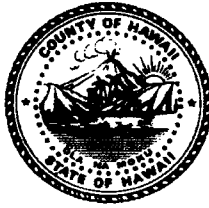


William P. Kenoi  
Mayor



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

June 22, 2016

Klaus Conventz  
Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, Hawai'i 96745

Dear Mr. Conventz:

**SUBJECT: Application: Variance - VAR 16-000348**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owners: GARY M. HUGHES AND GENE M. HUGHES**  
**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 Northwest Side Yard Setback)**

**Tax Map Key: 9-2-029:020; Lot A**

The Planning Director certifies the **approval** of VAR-16-000348 subject to variance conditions. The variance will allow the single-story dwelling to remain on Lot A, with 17.60-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting in a 12.50-foot side (northwest) yard open space. It also allows for the 2-story addition to remain with 17.30-foot side (northwest) yard setback. This exception are in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space. This variance is from the subject property's minimum (northwest) side yard setback pursuant to the Hawai'i County Code, 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.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 2.01 acres and is located in the Hawaiian Ocean View Estates, Kahuku, Kau, Hawai'i. The subject property's street address is 99-7726 Pukeawe Place.

2. **County Zoning.** Single-Family Residence – Agricultural – 1 Acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 26, 2016. The variance site plan is drawn to scale, prepared by the Chrystal Thomas Yamasaki, L.P.L.S. (Wes Thomas and Associates), and denotes the position of the single-story dwelling and the two-story addition constructed into the minimum 20-foot side (northwest) yard setback and the 14-foot side (northwest) yard open space. The request affects the northwest side yard setback. (See Exhibit A)

The survey map shows that the single-story dwelling encroaches 2.4 feet into the 20-foot side (northwest) yard setback and 1.50 feet into the 14-foot side (northwest) yard open space. The two-story addition encroaches 2.7 feet into the 20-foot side (northwest) setback.

The encroachment leaves the single-story dwelling a minimum 17.60-foot side (northwest) yard setback in lieu of the required 20-foot side (northwest) yard setback associated roof eave projection resulting in a 12.50-foot side (northwest) yard open space. It also leaves the two-story addition with a 17.30-foot side (northwest) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (61227) was issued on November 26, 1974 to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area and decking. Subsequent building permits were issued, building permit (771248) for a garage; building permit (B2004-0207K) for the conversion of the garage to 2 bedrooms, 2 baths, new 3-car carport addition, and converting existing kitchen to a bedroom and new kitchen; Building permit (B2006-1242K) for addition of 2 bedrooms, 2 baths, storage, lanais and sundeck. All building permits received final inspections.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated March 11, 2016. (See Exhibit B.)
  - b. No comments were received from the Department of Public Works – Building.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on February 26, 2016

and March 15, 2016 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 16, 2016.

9. **Time Extension.** The applicant's variance application was acknowledged by letter dated March 9, 2016 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 24, 2016.
10. **Comments from Surrounding Property Owners or Public.** No comments were received from the Department of Public Works – Building.
11. **Consolidation.** Consolidation of Lots 2 and 6 into Lot A (CON-16-000322). (See Exhibit C)

#### **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 owner/applicant submitted the variance application to address or resolve the encroachment of the detached garage into the 20-foot side (northwest) yard setback and the 14-foot side (northwest) yard open space requirement.

The survey map shows that the single-story dwelling encroaches 2.4 feet into the 20-foot side (northwest) yard setback and 1.50 feet into the 14-foot side (northwest) yard open space. The two-story addition encroaches 2.7 feet into the 20-foot side (northwest) setback.

The encroachment leaves the single-story dwelling a minimum 17.60-foot side (northwest) yard setback in lieu of the required 20-foot side (northwest) yard setback associated roof eave projection resulting in a 12.50-foot side (northwest) yard open space. It also leaves the two-story addition with a 17.30-foot side (northwest) yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 1974, nearly 42 years ago, were 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.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject 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 water tank encroachments constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-story dwelling and two-story addition denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the detached garage was in compliance with all County requirements. Any structural or design correction of the detached garage to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side (northwest) yard setback, 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 structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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. The single-story dwelling has been in existence for approximately 42 years and the two-story addition was constructed approximately 9 years ago. Both structures were built under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

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

Based on the variance application's survey map, the detached garage built upon the subject property ("LOT A") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance 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. 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.
4. Should the single-story dwelling and the 2-story addition (footprint) 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 building occupancy.

Klaus Conventz  
Baumeister Consulting  
Page 6  
June 22, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-16-000348 null and void.

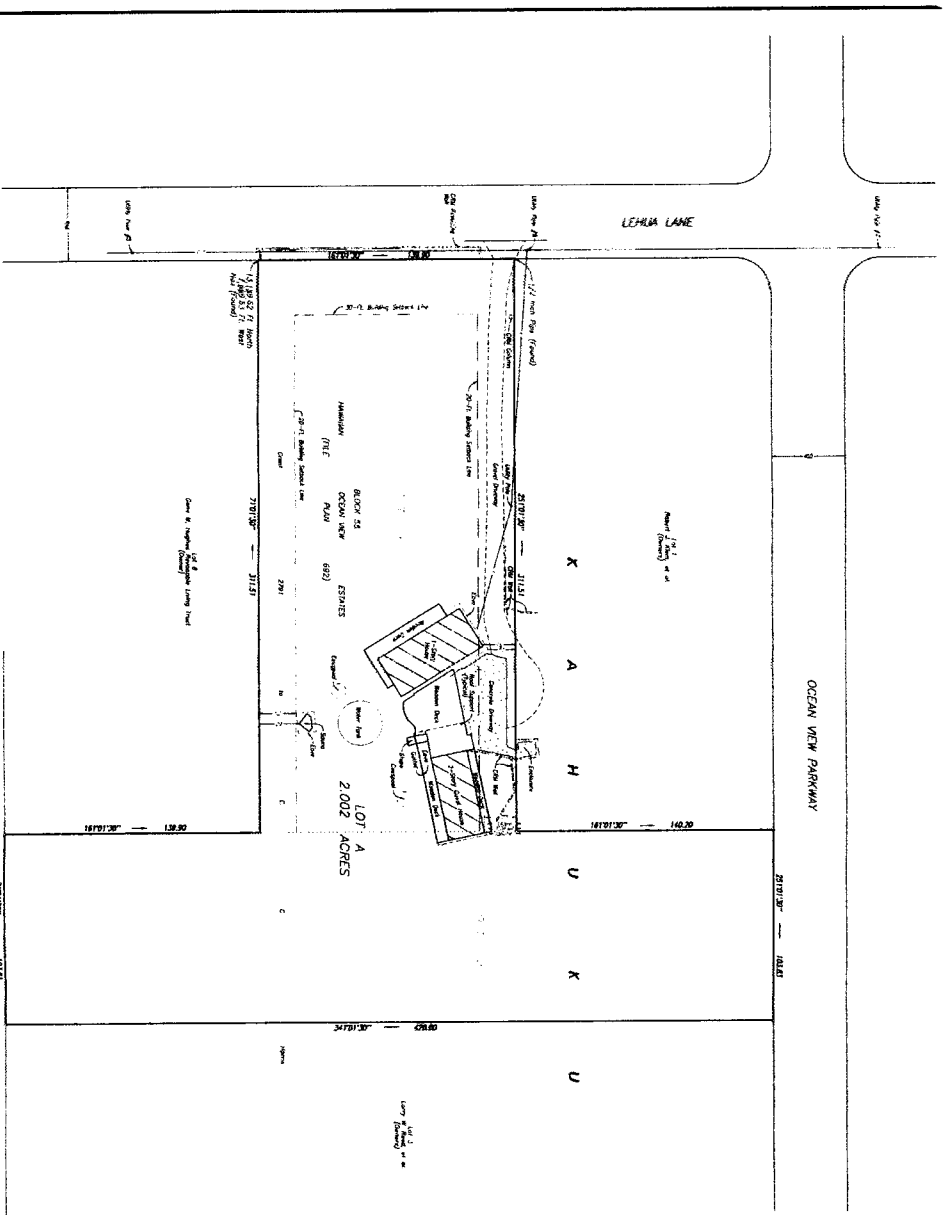
Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is fluid and cursive, with the first name "Duane" written in a larger, more prominent script than the last name "Kanuha".

DUANE KANUHA  
Planning Director

LHN:nci  
P:\Admin Permits Division\Variances From CoH02\Zone9\VAR16-000348TMK9-2-029-020 Hughes.doc

xc:           Real Property Tax Office (Hilo)  
              Gilbert Bailado, GIS (via email)



- NOTES:**
1. Accuracy and completeness of all things in Government Survey
  2. Topographic Station: Papea U.S. 1882
  3. The features, shown herein, were located by an actual survey on the ground done on January 16, 2016.
  4. The 2002 acre total shown is for the entire lot as shown on the County of Maui Plat Number 153185 (2002 Acre) dated April 2, 2002.
  5. Total of 2,002 Acres.
  6. Number of Acres: 2,002
  7. Number of Acres: 2,002
  8. Contingent upon the Survey and Adjoining Parties - A. 15, unless otherwise noted.
  9. Easement (Right of Way) - 153185

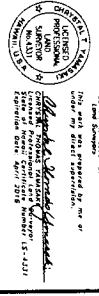
**EXHIBIT**

**A**

Approved For:  
**DAVID J. HARRIS, JR.**  
 HARRIS & ASSOCIATES, INC.  
 1311E, K. Street, Suite 201  
 Maui, Hawaii 96761

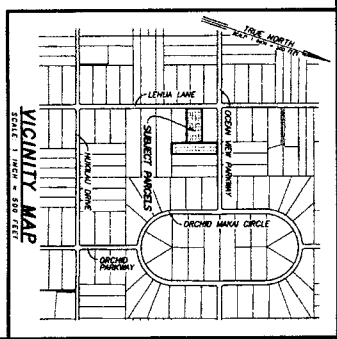
Approved By:  
**WES THOMPSON**  
 WES THOMPSON ASSOCIATES  
 1311E, K. Street, Suite 201  
 Maui, Hawaii 96761

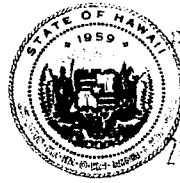
PROJECT NO.: 1582  
 DATE: MAY 18, 2016  
 FILED BOOK NO.: 1527 AND 022 (SAB DMSOVI)  
 TAX MAP REF.: 9-2-029-000 AND 022 (SAB DMSOVI)



WES THOMPSON ASSOCIATES  
 1311E, K. Street, Suite 201  
 Maui, Hawaii 96761  
 (808) 242-1311

**EXHIBIT MAP**  
 MAP SHOWING  
 PROPOSED CONSOLIDATION OF LOT 2 AND LOT 6 OF BLOCK 55  
 OF HAWAIIAN OCEAN VIEW ESTATES  
 (FILE PLAN 692)  
 Being Portions of Grant 2791 to C. C. Harris  
 INTO LOT A  
 At Kahuku, Ka'u,  
 Island and County of Hawaii, State of Hawaii





PLANNING DEPARTMENT

2016 MAR 15 PM 2:10

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

MEMORANDUM

DATE: March 11, 2016

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

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

SUBJECT: Application: Variance- VAR 16-000348  
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING  
Owner: GARY M. HUGHES (TMK 9-2-029:020)  
          GENE M. HUGHES (TMK 9-2-029:022)  
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 Northwest  
          Side Yard Setback)  
TMK: 9-2-029:020 & 022

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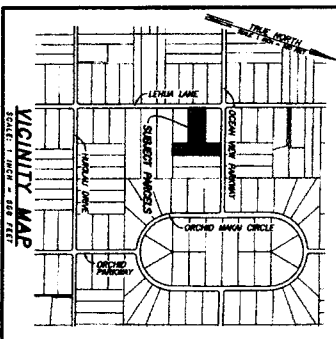
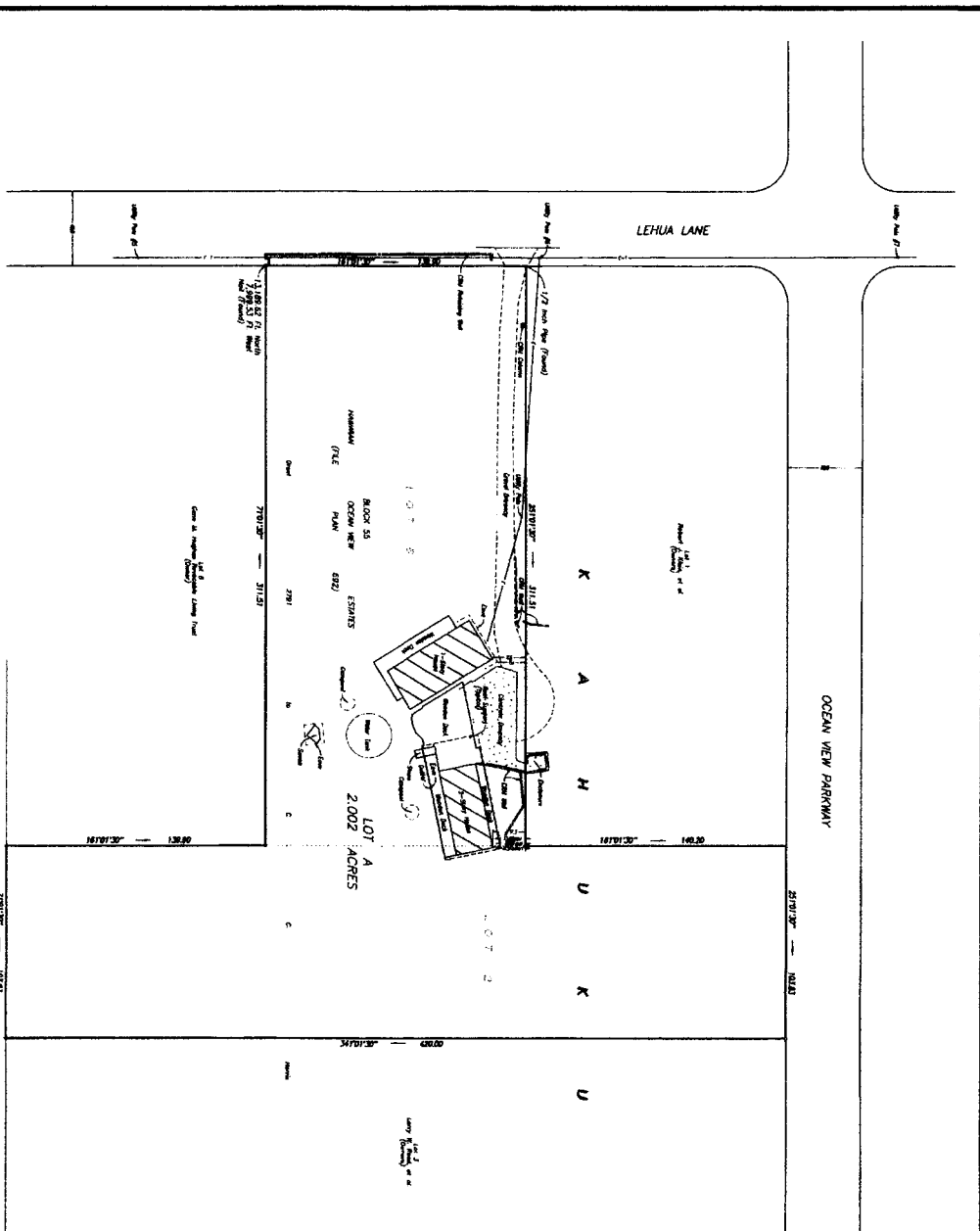
Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

**EXHIBIT**

*B*

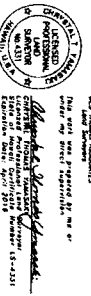
MAR 17 2016  
104264





MAP SHOWING  
 CONSOLIDATION OF LOT 2 AND LOT 6 OF BLOCK 55  
 OF HAWAIIAN OCEAN VIEW ESTATES  
 (FILE PLAN 692)  
 Being Portions of Grant 2791 to C. C. Harris  
 INTO LOT A  
 At Kahuku, Ka'u,  
 Island and County of Hawaii, State of Hawaii

**EXHIBIT**



APPROVED FOR THE SURVEYOR GENERAL OF HAWAII, STATE OF HAWAII  
 DATE: FEBRUARY 18, 2016

- NOTES:
1. All dimensions and computations are referring to Government Survey.
  2. Investigation Station: PAU O' OAHU.
  3. All bearings and distances are from available file.
  4. Subject Parcel is located in Zone 1. (Zone determined to be either Zone 1 or Zone 2 based on the ground data on October 16, 2016).
  5. Zone 1 Fee = 2002 Acres
  6. Zone 2 Fee = 0
  7. Payment Zone Fee may be used for operational activities and/or other purposes.
  8. Easement Fee = Residential

Approved For:  
 ONE HONORABLE HONORABLE C. C. HARRIS  
 GRANT 2791  
 1914 to Present (cont)

Prepared By:  
**WEB THOMAS ASSOCIATES**  
 75 LINA DRIVE, SUITE 200  
 KAHUKU, HAWAII 96731

PROJECT NO.: 18021  
 DATE: FEBRUARY 18, 2016