

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
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County of Hawai'i
PLANNING DEPARTMENT

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July 29, 2016

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

Dear Mr. Conventz:

SUBJECT: Application: Variance - VAR 16-000349
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: LAWRENCE A. AND DONNA C. M. PEEBLES TRUSTS
**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 West Front
Yard Setback)**
Tax Map Key: 7-6-005:018 (Unit 2 of Lot 33)

The Planning Director certifies the **approval** of Variance No. 16-000349, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 15.70-foot front (west) yard setback, in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement. It will also allow for the attached garage to remain with an 18.90-foot front (west) yard setback in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement.. These exceptions are in lieu of the required 30-foot front yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 8,361 square feet of land, is located in the Homewood Condominium Project, situated at Holualoa 1st and 2nd, North Kona, Hawai'i. The subject property's street address is 73-1193 Loloa Drive.

2. **Zoning.** Agricultural – 5 acres (A-5a).
3. **State Land Use.** Urban.
4. **Required Setback.** 30-ft. front and 20-ft. for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on February 26, 2016, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Chrystal Thomas Associates, LPLS, (Wes Thomas Associates), denotes the portions of the single-family dwelling built into the front (west) yard setback and side (west) yard open space. (**See attached survey map – Exhibit A**)

The survey map shows that the portion of the single-family dwelling encroaches 14.30 feet into the 30-foot front (west) yard setback and associated roof eave encroaches 13.40 feet into the 24-foot front (west) yard open space. It also shows that the attached garage encroaches 11.10 feet into the 30-foot front (west) yard setback and the associated roof eave encroaches 8.90 feet into the 24-foot front (west) yard open space.

The encroachment leaves portion of the single-family dwelling with a minimum 15.70-foot front (west) yard setback, in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement. It also leaves the attached garage with a 18.90-foot front (west) yard setback in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement..

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (A2012-BK01611) was issued on October 15, 2013 and final inspection given on January 29, 2013 for the construction of a 3-bedroom and 3-bath, single-family dwelling.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated March 11, 2016.

“Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.”
 - 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 February 26, 2016 and March 26, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i 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 July 31, 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 survey map shows that the portion of the single-family dwelling encroaches 14.30 feet into the 30-foot front (west) yard setback and associated roof eave encroaches 13.40 feet into the 24-foot front (west) yard open space. It also shows that the attached garage encroaches 11.10 feet into the 30-foot front (west) yard setback and the associated roof eave encroaches 8.90 feet into the 24-foot front (west) yard open space.

The encroachment leaves portion of the single-family dwelling with a minimum 15.70-foot front (west) yard setback, in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement. It also leaves the attached garage with a 18.90-foot front (west) yard setback in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot 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 single-family dwelling and detached garage encroachments problem to occur.

It appears that the single-family dwelling and attached garage constructed approximately 3 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 single-family dwelling encroachment constructed into the affected front yard setback and side yard open space of the subject property include the following actions:

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

Because the encroachments are within the front yard setback and 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 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 leaves portion of the single-family dwelling with a minimum 15.70-foot front (west) yard setback, in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement. It also leaves the attached garage with a 18.90-foot front (west) yard setback in lieu of the required 30-foot front (west) yard setback and associated roof eave projection resulting with a 10.6-foot front (west) yard open space in lieu of the required 24-foot open space requirement.

The encroachment of the single family dwelling and garage still allows for adequate air circulation, as the affected area is within the front yard setback.

It appears that the single-family dwelling constructed nearly 3 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.

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.

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 and garage built upon the subject property (Unit 2 of LOT 33) will not meet the minimum front 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


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dba Baumeister Consulting
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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 single-family dwelling and garage built 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. 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. 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-16-000349 null and void.

Sincerely,



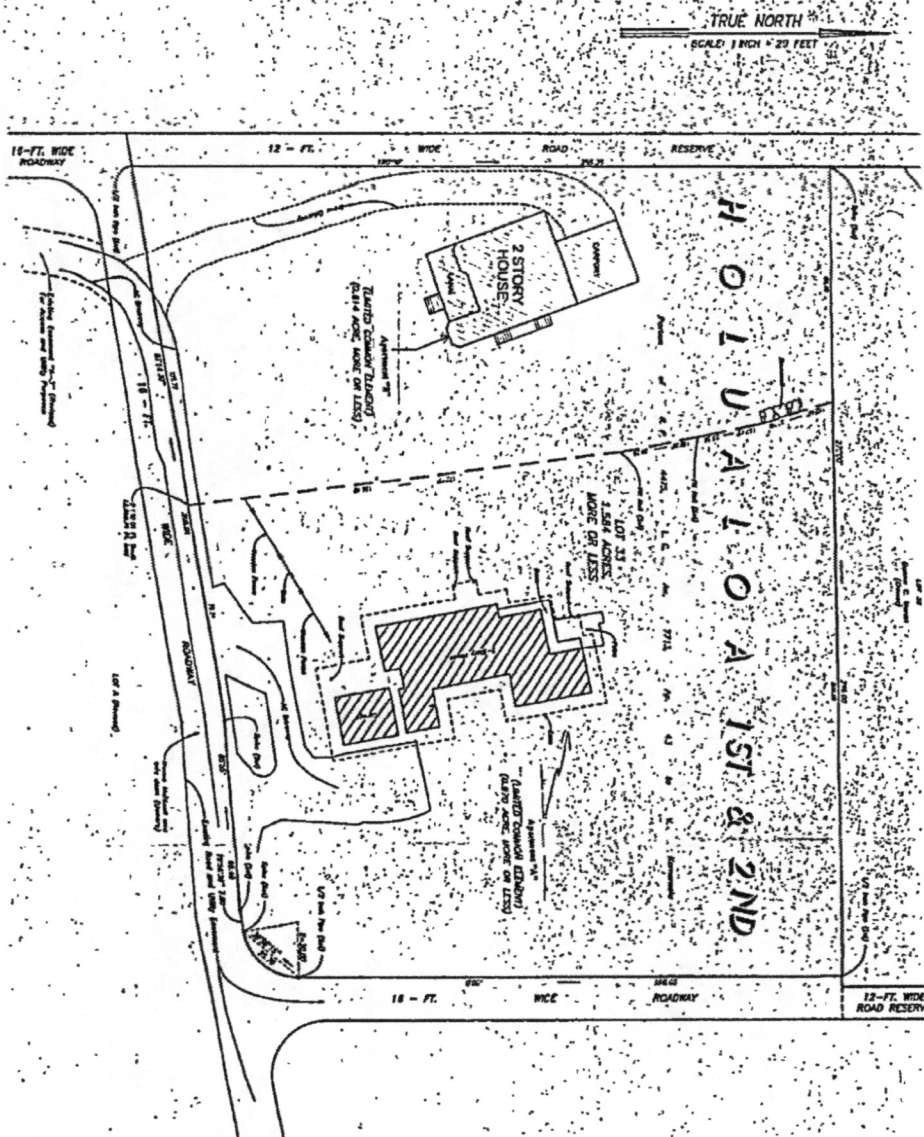
DUANE KANUHA
Planning Director

LHN:nci

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

SITE PLAN



PROJECT SITE PLAN
HOMWOOD
CONDOMINIUM PROJECT
 SHOWING
 UNITS 1&2 OF LOT 33 T.M.K. (3) 7-6-005:018
 BEING A PORTION OF:
 R.P. 4475, L.C. LAW, 7713, A.P. 43 to V, KAMAMALLU
 AT HOLLUALOA 1ST & 2ND, NORTH KONA,
 ISLAND & COUNTY OF HAWAII, STATE OF HAWAII
 AMENDMENT TO
 CONDOMINIUM MAP NO. 2817

EXHIBIT "A"

DATE	DESCRIPTION
1	1 OF 3 SHEETS

AMMENDMENT TO CPR FOR:
HOMWOOD CONDOMINIUM PROJECT
 NORTH KONA, HAWAII
 T.M.K. (3) 7-6-005:018 0002



PIPER DESIGNS

Peter Piper 331-2244
 Licensed Professional Engineer
 License No. 10133
 State of Hawaii