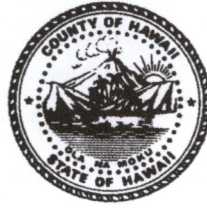


William P. Kenoi
Mayor



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 17, 2016

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

Dear Mr. Conventz:

SUBJECT: Application: Variance - VAR 16-000352
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owners: KEVIN M. CAWLEY TRUST AND
MATTHEWS M. HAMABATA
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 South Front
Yard Setback and West Side Yard Setback)

Tax Map Key: 7-3-013:028 Lot 118

The Planning Director certifies the **approval** of Variance No. 16-000352, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 12.62-foot front (south) yard setback, in lieu of the required 15-foot front (south) yard setback. It will also allow for the roof eave of the covered lanai to remain with a 3.57-foot side (west) yard open space in lieu of the required 4-foot side 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 25-5-76, 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 Wonder View Lots, situated at Kalaoa 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:** 15-ft. front and rear, 8-ft. for sides.
5. **Variance Application-Site Plan:** The applicant submitted the variance application, attachments, and filing fee on March 4, 2016, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Thomas G. Pattison, LPLS, (Pattison Land Surveying, Inc.), denotes the portions of the single-family dwelling built into the front (south) yard setback and side (west) yard open space. (See attached memorandum – Exhibit A)

The survey map shows that the portion of the single-family dwelling encroaches 2.38 feet into the 15-foot front (south) yard setback and the roof eave of the covered lanai encroaches 0.43 feet into the 4-foot side (west) yard open space.

The encroachment leaves a minimum 12.62-foot front (south) yard setback in lieu of the required 15-foot front yard setback requirement. It also leaves the roof eave of the covered lanai encroaches 3.57 feet into the side (west) yard open space, in lieu of the required 4-foot side yard open space requirement.

6. **County Building Records:** Hawai'i County Real Property Tax Division records indicate that a building permit (1001) was issued on January 1, 1974, for the construction of a 4-bedroom and 3-bath, single-family dwelling.
7. **Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum, dated March 17, 2016. (See attached memorandum – Exhibit B)
 - 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 March 4, 2016 and March 23, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on March 29, 2016.
9. **Time Extension:** The applicant's variance application was acknowledged by letter dated March 14, 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 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 survey map shows that the portion of the single-family dwelling encroaches 2.38 feet into the 15-foot front (south) yard setback and the roof eave of the covered lanai encroaches 0.43 feet into the 4-foot side (west) yard open space.

The encroachment leaves a minimum 12.62-foot front (south) yard setback in lieu of the required 15-foot front yard setback requirement. The encroachment also leaves the roof eave of the covered lanai with a minimum 3.57 feet into the side (west) yard open space, in lieu of the required 4-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 and covered lanai constructed nearly 42 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 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 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.

Another alternative is to consolidate the subject property with the adjoining side (west) yard property which is owned by another party, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Also, because the encroachments are within the front yard setback, to consolidate the subject property with the roadway and to resubdivide 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 of the single family dwelling, resulting with a minimum of 12.62-foot front south yard setback, still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

It appears that the single-family-dwelling and covered lanai constructed nearly 42 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.

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 covered lanai built upon the subject property (LOT 118) will not meet the minimum rear yard setback and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

Klaus D. Conventz
dba Baumeister Consulting
Page 5
June 17, 2016

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 single-family dwelling and covered lanai 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-16-000352 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR16-000352TMK7-3-013-028Cawley-Hamabata.doc

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

MAP SHOWING EXISTING CONDITIONS UPON

LOT NO. 118

of "KONA WONDER VIEW LOTS" File Plan 765
 Being a Portion of File Plan 765 at Kalaea 2nd,
 North Kona, County of Hawaii and State of Hawaii
 TMK No. (3) 7-3-013:028

TRUE NORTH

EXHIBIT

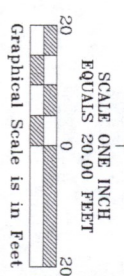
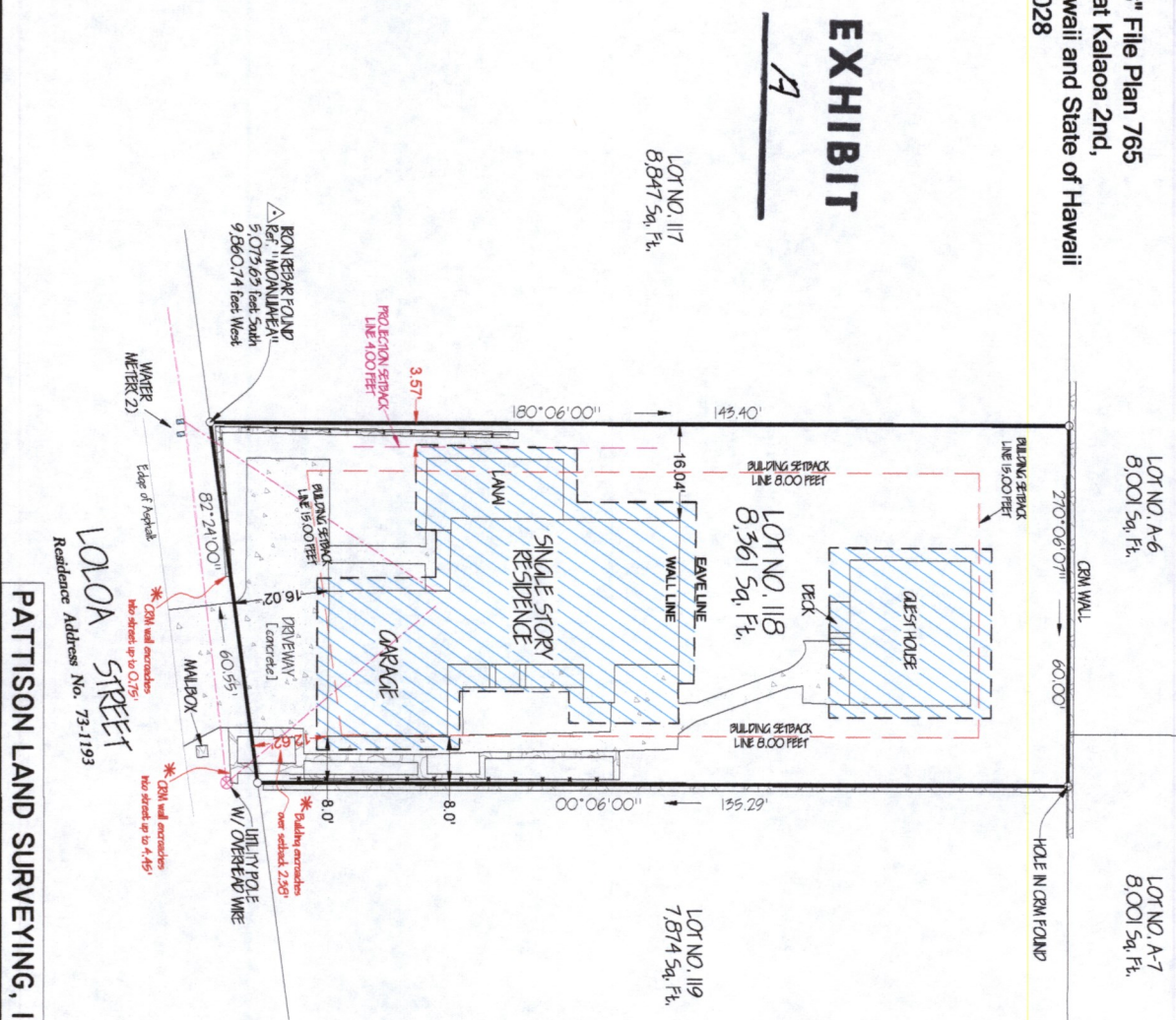
A

NOTE: BASIS OF AZIMUTH DERIVED
 USING SOKKIA GPS R/S SYSTEM
 NOTE: ALL CORNERS ARE FOUND
 & 8" IRON PIPES IN CONCRETE
 UNLESS OTHERWISE NOTED
 NOTE: ALL AZIMUTHS & DISTANCES
 ARE SHOWN & MAPPED HEREON
 IN A CLOCKWISE DIRECTION

NOTES:

- * 1) Boundary encroachments were found as shown & mopped hereon.
- * 2) Violations of County zoning set-back codes were found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on February 17th, 2016.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry Wall.

Setback Lines are shown from current data, but should be verified by builder. The description on this plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title. All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local Ordinance. It is the responsibility of the client to verify all setbacks before building by same and report any discrepancy at once. Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.



| LEGEND | |
|----------|---------------|
| [Symbol] | CONCRETE |
| [Symbol] | CRM WALL |
| [Symbol] | WATER METER |
| [Symbol] | FENCE |
| [Symbol] | OVERHEAD WIRE |

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision and that there are no apparent or visible encroachments or easements, known to me, except as shown and mapped hereon.



Thomas G. Pattison

THOMAS G. PATTISON
 Hawaii License No. 10743
 February 18th, 2016 - Job 15062
 68-1125 North Kaula Drive • Unit 906
 Kamae Hawaii 96743 Phone 327-9439

PATTISON LAND SURVEYING, INC.

LOLOA STREET
 Address No. 73-1193



2016 MAR 18 AM 9:00

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

MEMORANDUM

DATE: March 17, 2016

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

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

SUBJECT: Application: Variance VAR-16-000352
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: DEVIN M. CAWLEY TRUST AND
MATTHEWS M. HAMABATA TRUST
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
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Open Space Requirements (Encroachment into South Front
Yard Setback and West Side Yard Setback)
TMK: 7-3-013:028, Lot 118

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

EXHIBIT

B

