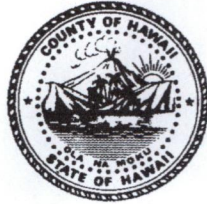


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
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

September 18, 2017

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

Dear Mr. Conventz:

**SUBJECT: VARIANCE: VAR-16-000394**  
**Owners: Steven T. Shaner and Patricia Shaner-Knudsen**  
**Request: Correct Typographical Error**  
**TMK: 7-4-009:013**

---

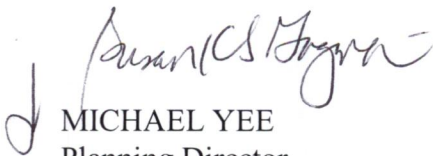
Pursuant to your email dated March 22, 2017, you have brought to our attention that a typographical error was found in Variance 16-000394.

Therefore, we hereby amend page 1, lines 8 to 11 of Variance 16-0000394, to be corrected to read as follows:

*These exceptions are in lieu of the required [30-foot] 20-foot front yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section [25-5-76] 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.*

Should you have any questions, please contact Larry Nakayama at (808) 961-8149 or [Larry.Nakayama@hawaiicounty.gov](mailto:Larry.Nakayama@hawaiicounty.gov).

Sincerely,

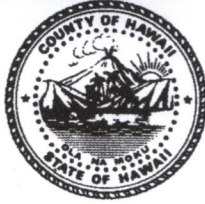


MICHAEL YEE  
Planning Director

LHN:nci

\\COH33\planning\public\Admin Permits Division\Variances From CoH02\Variance Amendment Letter\Shaner-Knudsen  
AmendmentLetter VAR-16-0000394.doc

Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
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

March 15, 2017

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

Dear Mr. Conventz:

**SUBJECT: Application: Variance - VAR 16-000394**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owner: STEVEN T. SHANER AND PATRICIA SHANER KNUDSEN**  
**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 Northeast Front Yard Setback and Southeast and Southwest Side Yard setback).**

**Tax Map Key: 7-4-009:013 (Lot 5)**

The Planning Director certifies the **approval** of Variance No. 16-000349, subject to variance conditions. The variance will allow portion of the open carport to remain with a minimum 7.8-foot to a minimum 8.5-foot west front yard setback, in lieu of the required 20-foot north front yard setback and 14-foot front yard open space requirement. It will also allow for the guest quarters to remain with an 8.2-foot southwest side yard setback and a minimum 5.2 feet to a minimum 7.1 feet southeast side yard setback, in lieu of the required 10-foot southwest and southeast side yard setback. The guest quarter's roof eave projection results with a 3.3-foot southeast yard open space, in lieu of the required 5-foot side yard 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.

The open shed encroaching into the east side yard setback shall be permanently removed and the at-grade wooden deck shall be cut back to meet the 5-foot side yard open space requirement.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 10,777 square feet of land, is located in the Hale Pa-Lani Subdivision, situated at Kealakehe, North Kona, Hawai'i. The subject property's street address is 74-854 Laimana Street.
2. **Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10)
3. **State Land Use.** Urban.
4. **Required Setback.** 20-foot 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 September 23, 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 northeast front yard setback and southwest and southeast side yard setback. **(See attached survey map – Exhibit A)**

The survey map shows that the portion of the open carport encroaches 11.50 feet to 12.2 feet into the 20-foot north front yard setback and 14-foot front yard open space requirement. Portion of the guest quarter's encroaches 1.8 feet into the southwest yard setback and 2.9 feet to 4.8 feet into the southeast side yard setback, with the associated roof eave encroaches 1.7 feet into the 5-foot southeast side yard open space.

The encroachment leaves portion of the open carport with a minimum 7.8-foot to a minimum 8.5-foot west front yard setback, in lieu of the required 20-foot north front yard setback and 14-foot front yard open space requirement. It also leaves the guest quarters with an 8.2-foot southwest side yard setback and a minimum 5.2 feet to a minimum 7.1-foot southeast side yard setback in lieu of the required 10-foot southwest and southeast side yard setbacks. The guest quarter's roof eave projection results with a 3.3-foot southeast side yard open space in lieu of the required 5-foot side yard open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (19490) was issued on August 13, 1957 for the construction of a 3-bedroom and 1-bath, single-family dwelling.

The dwelling was constructed in 1957 prior to the adoption of the Zoning Code in 1967 which means that there were no minimum yard setbacks at the time the single-family dwelling was built. Therefore, since the construction of the single-family dwelling occurred before the adoption of the Zoning Code, the single-family dwelling is considered a legal,

“non-conforming” structure that remains in compliance with the requirements of the zoning code. Therefore, no setback variance was required for the single-family dwelling.

7. **Zoning Violation.** Complaint (ZCV 2015-086W) was received on October 5, 2015, citing building within the setback and a lanai built over the boundary line.
8. **Agency Comments and Requirements.**
  - a. No comments received from the State Department of Health (DOH).
  - 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 September 23, 2016 and October 20, 2016, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on October 26, 2016.
10. **Time Extension.** The applicant’s variance application was acknowledged by letter dated October 12, 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 March 15, 2017.
11. **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:**

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the guest quarters and open carport encroachment problems to occur.

The survey map shows that the portion of the open carport encroaches 11.50 feet to 12.2 feet into the 20-foot north front yard setback and 14-foot front yard open space requirement. Portion of the guest quarters encroaches 1.8 feet into the southwest side yard setback and 2.9 feet to 4.8 feet into the southeast side yard setback, with the associated roof eave encroaches 1.7 feet into the 5-foot southeast side yard open space.

The encroachment leaves portion of the open carport with a minimum 7.8-foot to a minimum 8.5-foot west front yard setback, in lieu of the required 20-foot north front yard setback and 14-foot front yard open space requirement. It also leaves the guest quarters with an 8.2-foot southwest side yard setback and a minimum 5.2 feet to a minimum 7.1 foot southeast side yard setback, in lieu of the required 10-foot southwest and southeast side yard setback. The guest quarter's roof eave projection results with a 3.3-foot southeast side yard open space, in lieu of the required 5-foot side yard open space requirement.

It appears that the single-family dwelling was built under Building Permit No. 19490, issued on August 13, 1957 with a carport and water masonry water catchment. A lanai addition under Building Permit No. 33776 was issued on July 6, 1966.

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. The improvements were established approximately 40 years ago. Tax records show that the carport was built in the late sixties or early seventies. The masonry catchment was converted into a storage area and the southeast corner of the guest quarter's addition was added without building permits. The owners were unaware of any encroachments until an ALTA survey was completed with regards to a setback violation inquiry.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation. 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 open carport and guest quarters, constructed to fit within the correct building envelope, denoted on the recent survey map, as prescribed by the zoning code. Any structural or design correction to the carport, to meet setback requirement, would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Because the encroachment is also within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

The applicant has stated in its background report that the open shed will be removed and the at-grade deck and boundary encroachments will be rectified.

*(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.

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 guest quarters and carport built upon the subject property (LOT 5) will not meet the minimum front and side yard setbacks 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 single-family dwelling, carport and guest quarters 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. The open shed encroaching into the east side yard setback, shall be removed. The wooden deck encroaching into the east side yard open space, shall be cut back to comply with the 5-foot open space requirement. The removal of the open shed and the cutting back of the grade level wooden deck, shall be completed within six month from the issuance of this variance.
5. 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.
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-16-000394 null and void.

Sincerely,



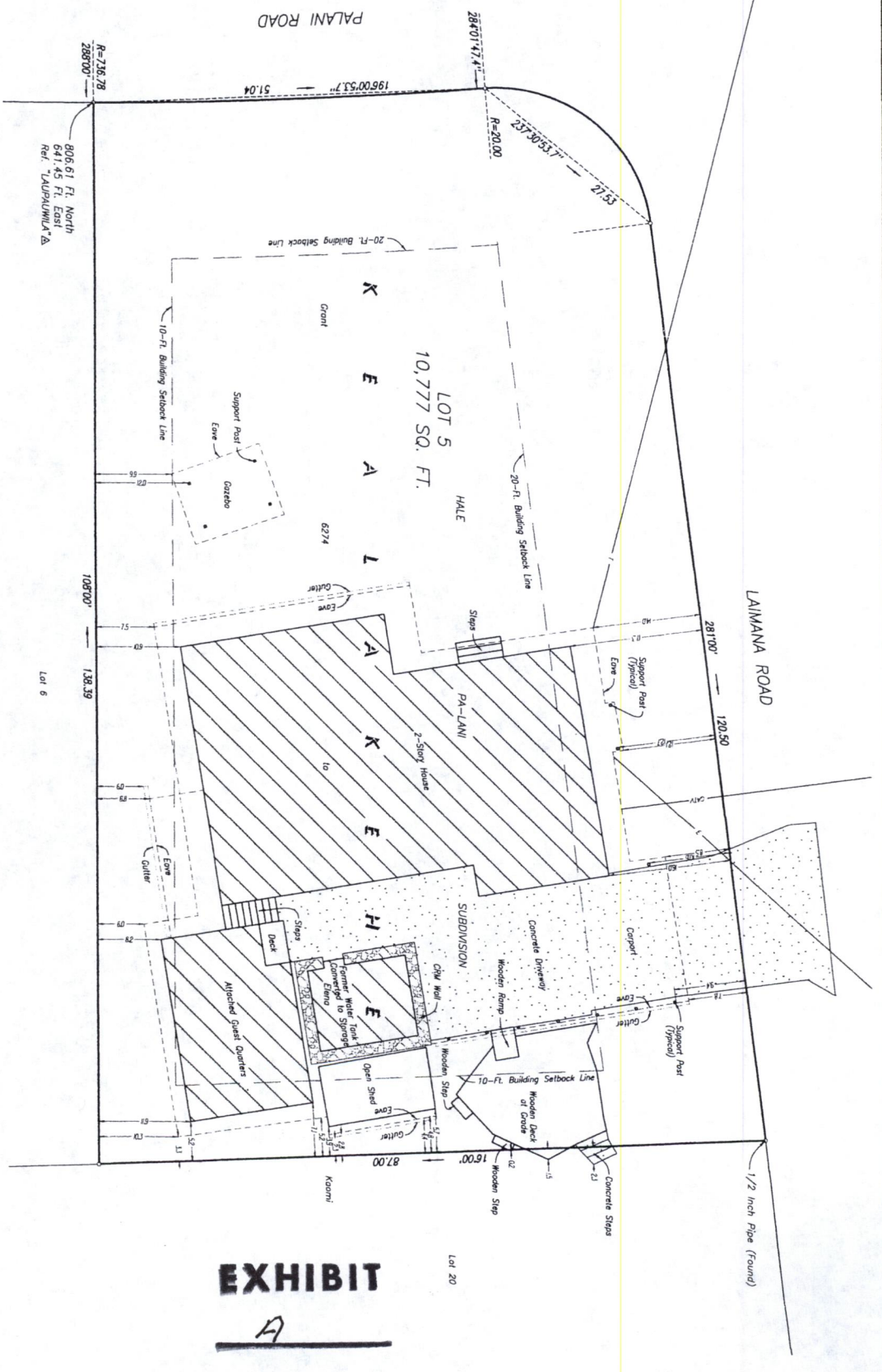
MICHAEL YEE  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR16-000394TMK7-4-009-013Shaner-Knudsen.doc

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

TRUE NORTH  
SCALE 1 INCH = 10 FEET



**EXHIBIT**  
**A**

**NOTES:**

1. The distances shown between the property lines and the features, shown hereon, are based on selected found boundary monumentation and acceptable tolerances for properties of this nature.
2. The features, shown hereon, were located by an actual survey on the ground done on August 29, 2016.
3. As per the scope of work, NO ornamental plants and may overhang the property line from either side along portions of the perimeter of the subject parcel of land.

**MAP SHOWING**  
**EXISTING FEATURES AFFECTING LOT 5**  
**OF HALE PA-LANI SUBDIVISION**  
  
Being a Portion of Grant 6274 to Elena Koomi  
At Kealahou, North Kona  
Island and County of Hawaii, State of Hawaii

Prepared For:  
**STEVEN THOMAS SHAWER AND PATRICIA SHAWER KNUDSEN**

C/o Brian R. Cook  
Brian R. Cook Development, Inc.  
78-7021 Keolu Street  
Kailua-Kona, Hawaii 96740

Prepared By:  
**WES THOMAS ASSOCIATES**

75-5749 Kolowai Street  
Kailua-Kona, Hawaii 96740  
Tel: 888-258-4450  
Email: surveys@wethomas.com



*Chrystal T. Yamasaki*  
**CHRISTAL T. YAMASAKI**  
Licensed Professional  
Land Surveyor  
No. 4331  
Hawaii, U.S.A.  
This work was prepared by me or  
under my direct supervision.  
WES THOMAS ASSOCIATES  
Land Surveyors  
Expiration Date: April 2018

PROJECT NO.: 18850  
DATE: SEPTEMBER 13, 2016  
FIELD BOOK NO.: 7-4-009-013 (3RD DIVISION)  
FAX MAP KEY: 7-4-009-013 (TECHNICAL CHANGES)  
REVISED: SEPTEMBER 16, 2016