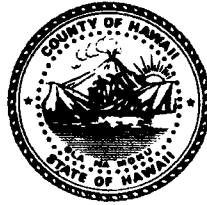


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
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
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

July 24, 2017

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

Dear Mr. Conventz:

SUBJECT: Application: Variance - VAR 17-000412
Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING
Owner: GARY W. & LUANNE K. SPICER TRUST
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 East Side Yard Setback)

Tax Map Key: 7-7-017:010

The Planning Director certifies the **approval** of Variance No. 17-000412, subject to variance conditions. The variance will allow portions of the two-story single-family dwelling to remain with a minimum 6.96 feet east side yard setback and associated roof eave projection resulting with a minimum 3.30-foot east side yard open space. These exceptions are in lieu of the required 8-foot side yard setback and the 4-foot side yard open space requirement 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 8,165 sq. ft. of land, is located in the White Sands Beach Estates situated at La'aloa 1st and 2nd, Kapalaalaea 1st, District of North Kona, Hawai'i. The subject property's street address is 77-6555 Kahananui Place.
2. **Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5)
3. **State Land Use.** Urban.

4. **Required Setback.** 15-feet for front and 8-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. **Zoning Code Violation.** ZCV 207-011W; the complaint alleges that the two-story dwelling additional units created additional dwelling units. Subsequently, the alleged zoning violation has been corrected. **(See Closure letter – Exhibit B)**
6. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on February 21, 2017, 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 east side yard setback. **(See attached survey map – Exhibit A)**

The survey map shows that the portion of the single-family dwelling encroaches 1.04 feet into the 8-foot east side yard setback and the associated roof eave encroaches 0.70 feet (8.40 inches) into the 4-foot east side yard open space requirement.

The encroachment leaves portion of the single-family dwelling to remain with a minimum 6.96 east side yard setback, in lieu of the required 8-foot side yard setback and associated roof eave projection to remain with a minimum 3.30-foot east side yard open space in lieu of the minimum 4-foot side yard open space requirement

7. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (996498) was issued on December 30, 1999 for the construction of a 3-bedroom, and 4 bath, Two story single-family dwelling. Building Permit was finalized on April 26, 2000.
8. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated January 3, 2017: "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 (Kona).
9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on February 21, 2017 and March 7, 2017, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on March 14, 2017.

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 28, 2017 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 24, 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:

The survey map shows that the portion of the single-family dwelling encroaches 1.04 feet into the 8-foot east side yard setback and the associated roof eave encroaches 0.70 feet (8.40 inches) into the 4-foot east side yard open space requirement.

The encroachment leaves portion of the single-family dwelling to remain with a minimum 6.96-foot east side yard setback, in lieu of the required 8-foot side yard setback and associated roof eave projection to remain with a minimum 3.30-foot east side yard open space, in lieu of the minimum 4-foot side yard open space requirement

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 single-family dwelling constructed nearly 17 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 east side yard setback and east side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the proposed single-family dwelling 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 was in compliance with all County requirements.

Because the encroachments are within the side yard setback, one alternative would be to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum front and side 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.

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 with attached garage

Klaus D. Conventz
dba Baumeister Consulting
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July 24, 2017

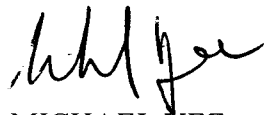
built upon Lot 29 will not meet the minimum side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 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 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-17-000412 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

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

**MAP SHOWING EXISTING CONDITIONS UPON
LOT NO. 29**

**of "WHIT SANDS BEACH ESTATES" File Plan 1101
Being a Portion of File Plan 1101 at Laaloa 1st & 2nd, Kapalaalaea 1st,
North Kona, County of Hawaii Island of Hawaii and State of Hawaii
TMK No. (3) 7-7-017:010**

NOTE: BASIS OF AZIMUTH DERIVED
USING SOKKIA OPS RIK SYSTEM

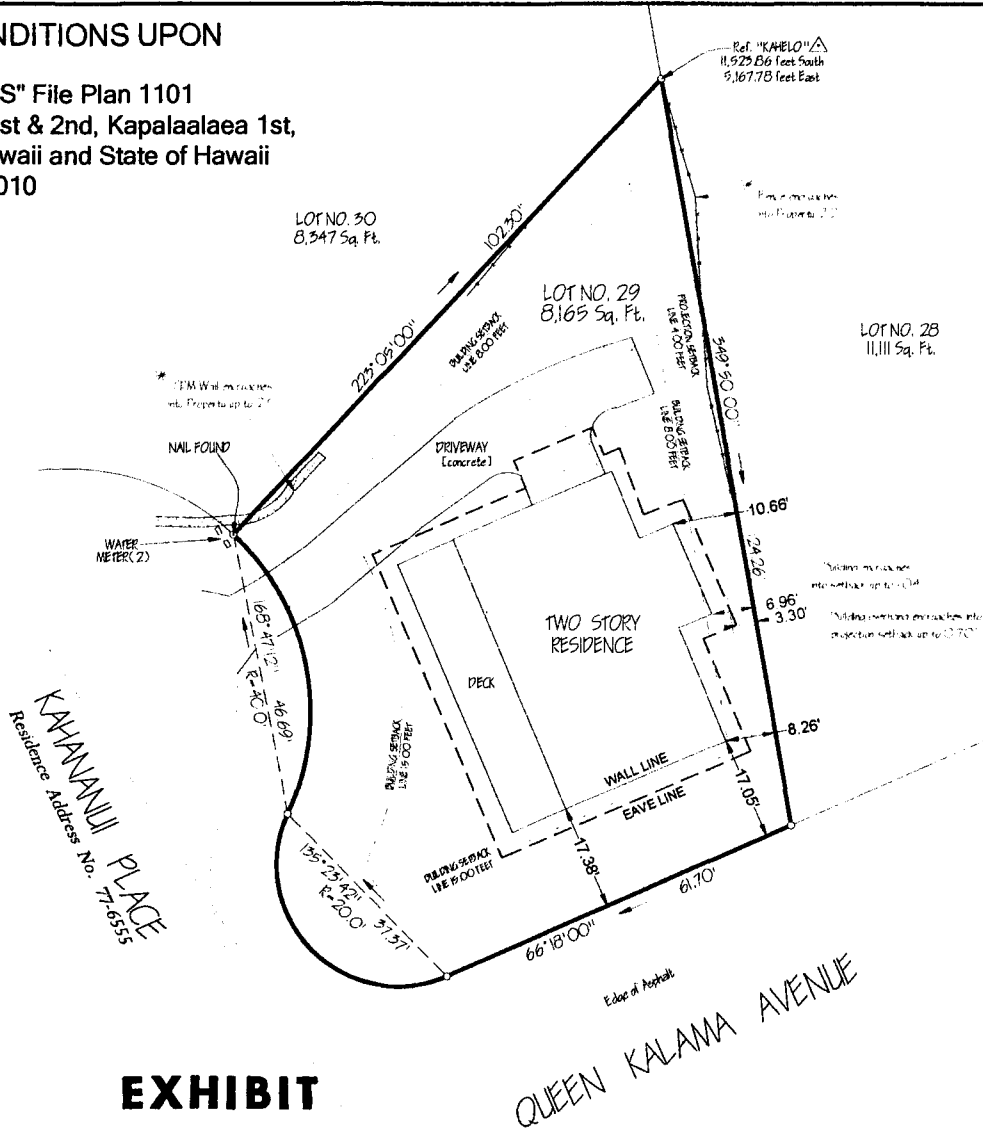
NOTE: ALL CORNERS ARE FOUND
1/2" IRON PIPES IN CONCRETE
UNLESS OTHERWISE NOTED

NOTE: ALL AZIMUTHS & DISTANCES
ARE SHOWN & MAPPED HEREON
IN A CLOCKWISE DIRECTION

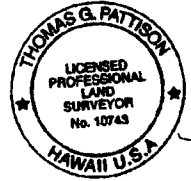
NOTES:

- *1) Boundary encroachments were found as shown & mapped hereon.
- 2) Violations of County zoning setback 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 8th, 2017.
- 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 ordinances, no responsibility is assumed by Surveyor. Compare all points 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.



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

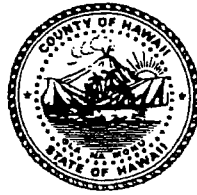
THOMAS G. PATTISON
Hawaii License No. 10743
February 9th, 2017--Job 17057

PATTISON LAND SURVEYING, INC.

1500 North Kapaolu Drive • Unit 908
Samuela Hawaii 96743 Phone 327-9439

EXHIBIT
A

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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Hilo, Hawai'i 96720
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Fax (808) 961-8742

May 8, 2017

Rosalba Morales
510 Century Drive
Anaheim California 92805

Dear Ms. Morales:

SUBJECT: Closure Letter
Referencing Warning Letter dated April 4, 2017
Complaint: Additional Single Family Dwellings with more than 1 Family
File No.: ZCV 2017-011W
TMK: 7-7-017:010, White Sands Beach Estates Subd, La'aloa 1st & 2nd,
Kapalaalaea 1st, North Kona Hawai'i

A site inspection was conducted on April 24, 2017 at approximately 1400 hrs by our Planning Inspectors Mr. Horace Yanagi and Ms. Elizabeth Gillis who confirms that the alleged violations stated in the Warning Letter dated August 22, 2016 have been corrected.

We appreciate your cooperation and assistance by allowing our inspectors onto your property to confirm that the corrective actions have been taken.

This investigation file has been closed.

Should you have any questions on this matter, please contact Planning Inspector Mr. Horace Yanagi at 323-4770 at the West Hawaii Planning Department office.

Sincerely,


MICHAEL YEE
Planning Director

EXHIBIT

B

HTY:hty

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Mr. Dwayne Inouye, Building Division, West Hawai'i Office
Mr. Wayne Saiki, Electrical Division, West Hawai'i Office

Rosalba Morales

May 8, 2017

Page 2

Mr. Steve Tossman, Plumbing Division, West Hawai'i Office
Mr. Dane Hiromasa, Department of Health, Waste Water Division
Mr. Horace Yanagi, Planning Inspector

Cc:

West Hawai'i TMK File