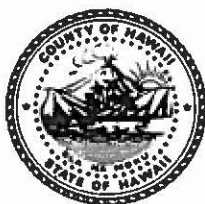


Harry Kim
Mayor

Wil Okabe
Managing 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

Michael Yee
Director

Duane Kanuha
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 6, 2019

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

Dear Mr. Conventz:

SUBJECT: Application: Variance – VAR-18-000472
Applicant: Klaus D. Conventz, dba Baumeister Consulting
Owner: Aaron S. Baribeau & Whitney M. Baribeau
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 Rear Yard Setback and Rear Yard Open Space)
Tax Map Key: 7-6-027:124

The Planning Director certifies the **approval** of Variance No. 18-000472, subject to variance conditions. The variance will allow the proposed single family dwelling on the subject property to be constructed in the proposed location, with the single story building 15 feet and the eave extending maximum 10 feet from the eastern property line, which are within the required yard setbacks and open space requirements as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property is a 40,259 square foot parcel located off of Kilohana Street in the Kona Vistas Subdivision, at Hōlualoa, North Kona. The subject property's street address is 76-6400 Nightingale Lane, Kailua-Kona, HI 96740.
2. **Zoning.** Single-Family Residential – 15,000 s.f. (RS-15).
3. **State Land Use.** Urban.
4. **Required Setback.** 20-foot front and rear and 10-foot for sides. Section 25-4-40, General requirements for yards and open space: (a) On every building site, yards of the minimum width or depth as specified for the established zoning district shall be maintained open and unobstructed from the ground up, except as specified in sections 25-4-40 through 25-4-47.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 11, 2018, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale. (See **application**)

March 6, 2019

VAR-18-000472 TMK 7-6-027-124 Baumeister Consulting for Baribeau

Page 2 of 4

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that there are no buildings on the parcel.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated January 19, 2019: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
8. **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 January 25, 2019 and February 22, 2019 respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on February 10, 2019.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Kona Vistas Association, Inc, letter dated December 18, 2018 – The applicant and owners were thanked for appearing before the Kona Vistas Board of Director's and determined in an unanimous vote that if the County grants the variance at 15 feet from the property line the Board would approve the design.
 - b. Don Zero, letter dated February 10, 2019 – "As residents of Kona Vistas we are against granting the variance as we previously state to their consultant. I'm sure they bought the lot at possibly a low price due to its odd location/size and they were fully aware of the requirements. I understand that might even be in the real-estate business. Since they had to know, there is no reason to do differently than the rest of who built had to adhere to the rules.

They should try not to be treated special and just build the house to fit the lot and rules."

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

1. *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 for the following reasons:

The subject lot is configured in a rectangle shape but has an existing "s" curved roadway easement, identified as Nightingale Lane, running through the property that allows access to a six lot subdivision. This roadway easement limits the building site to the southeast section of the property as the northwest section of the property has a steep elevation change.

The applicant states that in order to comply with the required setback the design of the residence would require extreme additional fill and massive retaining walls while the proposed septic system would be limited in size due to proximity to the easement line and existing high solid rock drop offs. This will cause the owner excessive cost to design a structurally safe residence.

The above special and unusual circumstances exist to a degree which if the variance was not granted would obviously interfere with the best use or manner of development of the property.

2. *There are no other reasonable alternatives that would resolve the difficulty.*

The variance application meets criteria for the following reasons:

The applicant states that a consolidation re-subdivision would address the issue. However this would require that the owner to consolidate and re-subdivide with lot 19 in order to comply with the Kona Vistas CC&R requirements. Which would be costly and impractical according to the applicant.

The applicant also states that another alternative would be level the top portion of the subject building site which would need a great deal of cut and fill work and require massive retaining walls and would require the owner to expend much more to building the residence.

The third alternative that the applicant discussed was another costly design of a steep driveway cut along the south boundary which would require additional costs to design a structurally safe scaffold to support the neighbor's swimming pool.

3. *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 for the following reasons:

The applicant points out that in normal circumstances the easement would have created separate parcel which would have resulted in different setback determination for the subject parcel. The proposed 15 foot setback would still allow for adequate air circulation and light exposure. The only directly affected neighbor has located their home more than 100 feet away from the boundary with the owner and will not impact on their view

Based on the foregoing findings and unusual circumstances, the applicant's request for variance is 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 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 site map, the proposed single family dwelling on the subject property will be allowed to be constructed in the proposed location, with the single story building 15 feet and the eave extending maximum 10 feet from the eastern property line, which is within the required 20-foot front yard setback and the 14-foot open space requirement, will not meet the minimum front and 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 structures 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. 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-18-000472 null and void.

Sincerely,



MICHAEL YEE
Planning Director

DEB:deb
P:\public\Admin Permits Division\Variance\2018\VAR-18-000472 TMK 7-6-027-124 Baumeister Consulting for Baribeau
cc: West Hawaii Office