



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 30, 2014

Ms. Kathleen Chin, Manager
Ekahi Hale, LLC
88 Pi'ikoi Street, #1811
Honolulu, HI 96814

Dear Ms. Chin:

SUBJECT: Application: VARIANCE – VAR-14-000205
Applicant: KATHLEEN CHIN, MANAGER/EKAHI HALE, LLC
Owners: EKAHI HALE, LLC
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, and
Section 25-5-76 Minimum Yards, Section 25-4-44, Permitted
Projections into Yards and Open Space Requirements.
(Encroachment into the Side (South) Yard Setback)
TMK: 9-2-126:018; (Lot 15)

The Planning Director certifies the **approval** of VAR-14-000205, subject to variance conditions. The variance will allow the existing single-family dwelling roof eave to remain on Lot 15 with a 12.1-foot side (south) yard open space. It also allows for the detached water tank to remain with a 14-foot side (south) yard setback. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements.

BACKGROUND AND FINDINGS

- 1. Location.** The subject property consists of approximately 43,610 square feet (1.001 acre) of land and is located in the Hawaiian Ocean View Estates Subdivision, at Kahuku, Ka'ū, Hawai'i. The subject property's street address is 92-8580 Trade Wind Boulevard.
- 2. County Zoning.** Agricultural – 1 acre (A-1a).
- 3. State Land Use.** Agricultural.

4. Setback Requirements: 30 feet for front and rear; 20 feet sides.

5. Variance Application-Site Plan. The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on March 19, 2014. The variance application's site plan map is drawn to scale and prepared by Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc.), and denotes the portions of the existing single-family dwelling built into the front (south) yard setback.

The survey map shows that portions of the single-family dwelling roof eave encroach 1.9 feet into the 14-foot side (south) yard open space the detached water tank encroaches 6 feet into the side (south) yard setback.

6. County Building Records. Hawai'i County Real Property Tax Division records indicate that a building permit (B2006-0794K) was issued on May 8, 2006, for the construction of a 5 bedroom and 2-1/2 bath single-family dwelling and detached water tank.

7. Agency Comments and Requirements:

- a. The State Department of Health (DOH) memorandum dated April 11, 2014. (See attached)
- b. No comments were received from the Department of Public Works Department – Building Division.

8. Public Notice. The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on May 21, 2014. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 11, 2014.

9. 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.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

(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 owner/applicant submitted the variance application to address or resolve the encroachment of the existing single-family dwelling roof eave into the 20-foot side (south) yard open space and the detached water tank into the 20-foot side (south) yard setback as required by the Zoning Code.

The survey map prepared by Thomas G. Pattison, L.P.L.S., of Pattison Land Surveying, Inc., shows that portion of the single-family dwelling roof eave encroaches 1.9 feet into the side (south) yard open space and the detached water tank encroaches 6 feet into the side (south) yard setback.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the roof eave encroachment problems to occur. The error is miniscule although exceeding the code requirement.

It appears that the single-family dwelling along with the detached water tank constructed nearly 8 years ago was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling and detached water tank did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, along with the unusual topography of the subject property special and unusual circumstances exist on the subject property which would interfere with highest and best use of the subject property.

Alternatives

(b) There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to address the building encroachments constructed into the affected front yard 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. Any structural or design corrections of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars. Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

- (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 criterion (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.

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. The single-family dwelling and detached water tank was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is **approved** subject to the following conditions:

1. Based on the variance application's survey map, the single-family dwelling and detached water tank built upon the subject property ("LOT 15") will not meet the minimum front yard and rear yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).
2. The applicant/owner, their assigns or successors shall be responsible for complying with all

stated conditions of approval.

3. 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 related to or connected with the granting of this variance.
4. Should the single-family dwelling and the detached water tank (footprint) 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 letter pertaining to building construction occupancy.
5. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance 14-000205 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:klt

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xc: Kona Office
Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via email)

NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH
PLANNING DEPARTMENT
COUNTY OF HAWAII


2014 MAY 30 PM 4:01

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

MEMORANDUM

DATE: May 30, 2014

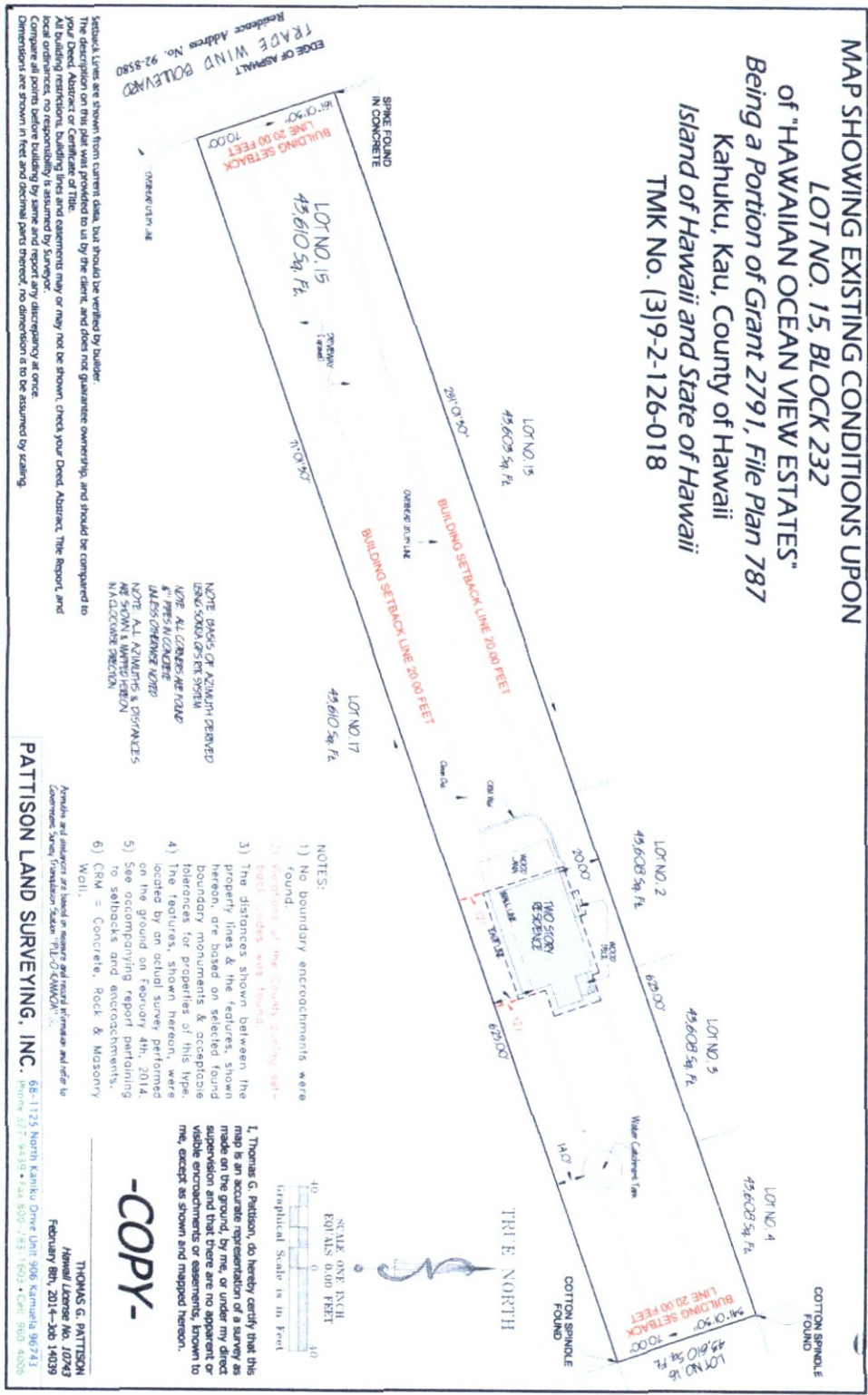
TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

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Permitted Projections into Yards and Open Space
Requirements (Encroachment into Rear (South) Yard
Setback.
Tax Map Key: 9-2-126:018; Lot 15

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

**MAP SHOWING EXISTING CONDITIONS UPON
 LOT NO. 15, BLOCK 232
 OF "HAWAIIAN OCEAN VIEW ESTATES"
 Being a Portion of Grant 2791, File Plan 787
 Kahuku, Kau, County of Hawaii
 TMK No. (3)9-2-126-018**



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.
 The building lines, no responsibility is assumed by Surveyor.
 Complete 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.

NOTE: BASIS OF AZIMUTH DERIVED
 USING SODALITE SYSTEM
 NOTE: ALL CORNERS ARE FOUND
 BY PIPES IN CONCRETE
 NOTE: ALL AZIMUTHS & DISTANCES
 ARE SHOWN & WRITTEN PER
 NAD 83 COORDINATE SYSTEM

- NOTES:
- 1) No boundary encroachments were found.
 - 2) Portions of the County zoning setback lines were not located.
 - 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for profiles of this type.
 - 4) The features, shown hereon, were located by an actual survey performed on the ground on February 4th, 2014.
 - 5) See accompanying report pertaining to setbacks and encroachments.
 - 6) CRM = Concrete, Rock & Masonry Wall.

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
 Hawaii License No. 10743
 February 8th, 2014 - Job 14039

Analysis and drawings are based on images and field sketches and refer to
 Government Survey, Hawaiian State, "HIL-CAMAKO-13"

PATTISON LAND SURVEYING, INC. 66-1125 North Kaniho Drive Unit 906 Kaimulua 96741
 Phone 477-9439 • Fax 808-743-1503 • Cell 960-4808

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