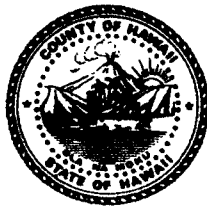


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
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

February 9, 2016

Kim Bryant  
84-1409 Māmalahoa Highway  
Captain Cook, HI 96704-8903

Dear Mr. Bryant:

**SUBJECT: Application: VARIANCE – VAR-15-000300**  
**Applicants: KIM BRYANT**  
**Owners: BANYAN REEF LLC**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76 Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into the Front (East) Yard Setback)**  
**TMK: 8-9-013:026; (Lot 8)**

The Planning Director certifies the **approval** of VAR-15-000300, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain on Lot 8 with a minimum 7.5-foot front (east) yard setback in lieu of the minimum 30-foot front yard setback and associated roof eave projection resulting with a 7.5-foot front (east) side yard open space, in lieu of the required 24-foot open space requirement. It will also allow for the detached water tank to remain with a minimum 20-foot front (east) yard setback and front (east) yard open space, in lieu of the required 30-foot side yard setback and 24-foot front (east) yard open space requirements. These encroachments are in lieu of the required 30-foot front yard setback and 24-foot front yard open space, 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 consists of approximately 7.138 acres of land and is located in the Makai Ho'ōpūloa-Anapuka Farm Lot Subdivision at Anapuka and Ho'ōpūloa, South Kona, Hawai'i. The subject property's street address is 89-1409 Māmalahoa Highway.
2. **County Zoning:** Agricultural – 5 acres (A-5a).

3. **State Land Use:** Agricultural.
4. **Setback Requirements:** 30 feet for front and rear; and 20 feet sides.
5. **Variance Application Site Plan.** The applicant submitted the variance application with attachments, filing fee and other submittals related to the variance application on July 15, 2015. The variance application site plan is drawn to scale and prepared by the applicant and denotes the portions of the existing single-family dwelling built into the front (east) yard setback. (See attached Exhibit A.)

The site plan prepared by the applicant shows that portion of the single-family dwelling encroaches 22.5 feet into the front (east) yard setback and encroaches 16.5 feet into the front (east) yard open space. It also shows that the water tank encroaches 10 feet into the 30-foot front (east) yard setback and 4 feet into the 24-foot front (east) yard open space

The encroachment leaves a minimum 7.50-foot front (east) yard setback and front (east) yard open space, in lieu of the required 30-foot front (east) yard setback and 24-foot front yard open space requirement. It also leaves the water tank with a 20-foot front (east) yard setback and front (east) yard open space in lieu of the required 30-foot front yard setback and 24-foot front (east) yard open space requirements.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2006-0350K) was issued for the construction of a 1-bedroom and 2-bath single-family dwelling with garage, tractor storage and tool shed.
7. **Agency Comments and Requirements:**
  - a. The State Department of Health (DOH) memorandum dated August 5, 2015: See attached Exhibit B.
  - b. No comments have been received from Department of Public Works – Building Division (Kona).
8. **Public Notice.** The applicants 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 July 21, 2015 and August 10, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on August 19, 2015.
9. **Time Extension.** The applicant submitted a variance application was received on July 22, 2015, and additional time to review the application was required. The applicants granted the Planning Director an extension of time to issue a decision on the Variance Application until February 12, 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.

#### **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 owners/applicants submitted the variance application to address or resolve the encroachment of the existing single-family dwelling into the 7.5-foot front (east) yard setback as required by the Zoning Code.

The site plan prepared by the applicant shows that portion of the single-family dwelling encroaches 22.5-feet into the front (east) yard setback and encroaches 16.5-feet into the front (east) yard open space. It also shows that the water tank encroaches 10-feet into the 30-foot front (east) yard setback and 4-feet into the 24-foot front (east) yard open space

The encroachment leaves a minimum 7.50-foot front (east) yard setback and front (east) yard open space, in lieu of the required 30-foot front (east) yard setback and 24-foot front yard open space requirement. It also leaves the water tank with a 20-foot front (east) yard setback and front (east) yard open space in lieu of the required 30-foot front yard setback and 24-foot front (east) yard open space requirements.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

Alternatives include the building encroachments and/or redesign the single-family dwelling 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 owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Therefore, 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 the single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the open carport to meet setback requirement would leave unattractive reconstruction scars and diminish the overall functionality of the single-family dwelling.

Because the encroachment is 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; 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 areas character and to adjoining properties. The single-family

dwelling has been in existence for approximately 9 years and 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 applicants 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**

Based on the variance application's survey map, single-family dwelling and catchment water tank built upon the subject property ("LOT 8") will not meet the minimum front yard setback 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 applicants/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners, their assigns or successors 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 assigns or successors, officers, employees, contractors, or agents under this variance or related 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 or additional farm dwelling 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.

Kim Bryant  
Banyan Reef LLC  
Page 6  
February 9, 2016

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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000300 null and void.

Sincerely,

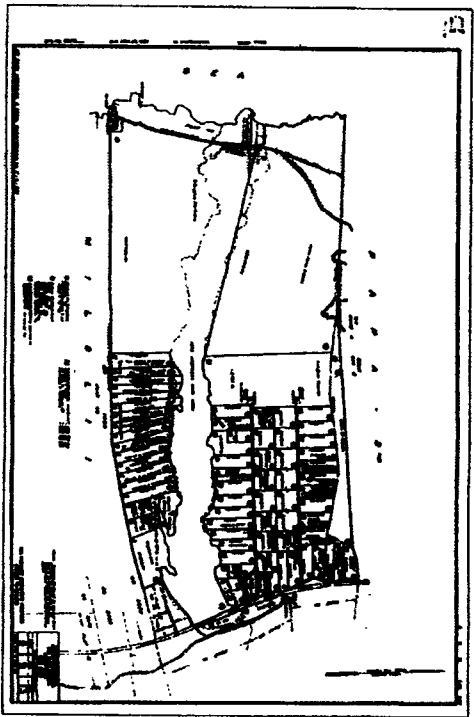
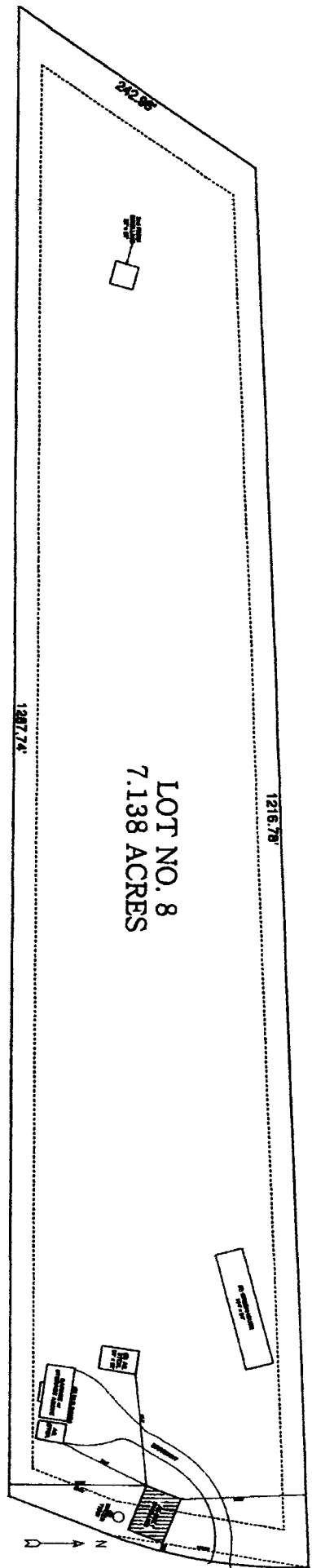


DUANE KANUHA  
Planning Director

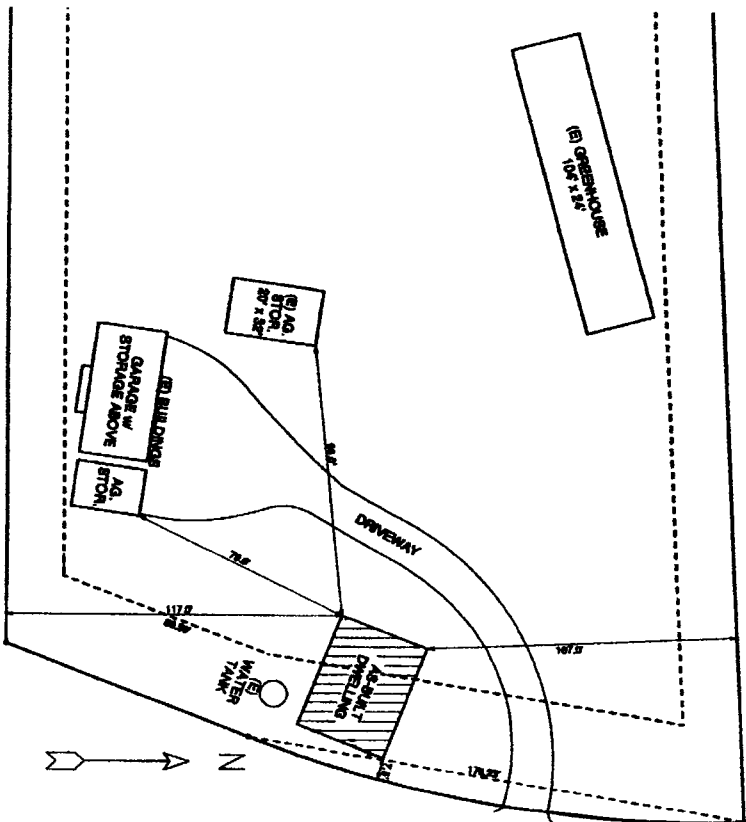
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xc: Planning Department-Kona Office  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS (via email)



TMK: (3) 8-9-003:026



**EXHIBIT** MAMALAOA HWY.

A

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

PLANNING DEPARTMENT  
2015-08-05 11:42

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

MEMORANDUM

DATE: August 5, 2015

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

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

SUBJECT: Application: Variance VAR-15-000300  
Applicant: KIM BRYANT  
Owner: BANYAN REE LLC/ KIMBRYANT  
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 the East Front  
Yard Setback).  
TMK: 8-9-013:026, Lot 8

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

**EXHIBIT**  
B

WORD: VAR-15-000300.eh

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