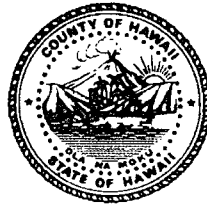


William P. Kenoi
Mayor



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

October 2, 2015

Bess Jennings
80-A Kaiwiki Road
Hilo, HI 96720

Dear Ms. Jennings:

SUBJECT: Application: Variance – VAR-15-000302-Revised
Applicant: BESS JENNINGS
Owner: BESS JENNINGS LIVING TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Front (Southwest) and Side (Northwest) Yard Setback and Open Space Requirement)

Tax Map Key: 2-7-005:040; Lot 10C

The Planning Director certifies the **approval** of Variance 15-000302-Revised, subject to conditions. The variance will allow the open carport to remain on Lot 10C, with a minimum 10-foot front (Southwest) yard setback and front yard open space in lieu of the required 20-foot front yard setback and required 14-foot open space requirement. It also allows the open carport and single family dwelling to remain with a 3-foot side (northwest) yard setback and side yard open space in lieu of the required 10-foot side yard open space requirement. The variance is from the subject property's minimum 10-foot side yard setback and 5-foot side yard open space requirement. These exceptions are in lieu of the required 10-foot side yard setback and 5-foot side yard open space, 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 contains approximately 15,956 square feet and is situated at Ka'ie'ie Homestead, South Hilo, Hawai'i. The subject property's street address is 27-360 Ka'ie'ie Road.

2. **County Zoning.** Agricultural – 10 acres (A-10a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 30, 2014. The variance application's site plan, drawn to scale and prepared by Kealii Beck (KnR Consultants), denotes that a portion of the open carport is built into the front (southwest) and side (northwest) yard setback and associated front (southwest) and side (northwest) yard open space.

The site plan shows that portion of the existing open carport encroaches 10 feet into the 20-foot front (southwest) yard setback and 4 feet into the 14-foot rear (southwest) yard open space and it also shows that the open carport and single-family dwelling encroach 7 feet into the 10-foot side (northwest) yard setback and 2 feet into the 5-foot side yard open space.

The encroachments leave a minimum 10-foot front (southwest) yard setback, in lieu of the required 20-foot rear yard setback and a 10-foot associated front (southwest) yard open space in lieu of the required 14-foot front open space requirement and it also leaves a minimum 3-foot side (northwest) yard setback and a 3-foot side (northwest) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#1585) was issued on January 23, 1947 to the subject property for a single-family dwelling consisting of a 3 bedroom, 1 bath, living room, kitchen, and dining area. An additional building permit was issued on August 13, 1976 (762011) for renovation to existing dwelling. There is no record of a building permit being issued for an open carport.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated August 20, 2015.
(Refer to attached DOH memorandum)
 - b. No comments received from Department of Public Works – Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on July 31, 2015 and August 20, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 19, 2015.

9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the open carport into the 20-foot front (southwest) and 10-foot side (northwest) yard setback and into the 10-foot front (southwest) and 5-foot side (northwest) yard open space as required by the Zoning Code.

The site plan shows that portion of the existing open carport encroaches 10 feet into the 20-foot front (southwest) yard setback and 4 feet into the 14-foot rear (southwest) yard open space and it also shows that the open carport and single-family dwelling encroach 7 feet into the 10-foot side (northwest) yard setback and 2 feet into the 5-foot side yard open space.

The encroachments leave a minimum 10-foot front (southwest) yard setback, in lieu of the required 20-foot front yard setback and a 10-foot associated front (southwest) yard open space in lieu of the required 14-foot front open space requirement and it also leaves a minimum 3-foot side (northwest) yard setback and a 3-foot side (northwest) yard open space.

According to the Hawai'i County Real property Tax Office records, the single-family dwelling was constructed in 1947 before the adoption of the Zoning Code in 1967. What this effectively means is that there were no minimum yard setbacks at the time the single-family dwelling was built.

However, on September 13, 1976 a building permit (#762011) was issued for the removal of the existing dwelling and the replacement of a new dwelling (see attached Building permit). Therefore, the legal non-conforming status is voided with new construction; therefore, a setback variance is required. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

It should be noted that the existing dwelling was built under valid building permits approximately 39 years ago. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. 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 current owner was unaware of any encroachment problem for the existing open carport and single-family dwelling until a formal complaint was filed with our office and a modern survey of the subject property was completed.

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

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 best use and development 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 correct and/or address the building encroachments constructed into the affected rear yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family residence and open carport denoted on the plot plan map to fit within the correct building envelope as prescribed by the Zoning Code. Any structural or design correction of the single-family dwelling and open carport to meet setback requirements would not be practical and leave unattractive reconstruction scars.

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

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 for a lot 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.

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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 10C") will not meet the minimum front and side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance 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 Hawaii 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 open carport 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. No permit shall be granted to allow an ohana or farm dwelling 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 building occupancy.
6. This Variance (Variance-15-000302-Revised) supersedes Variance 15-000302, issued on September 29, 2015.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000302.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR15-000302-RevisedTMK2-7-005-040
Jennings.doc.rtf

xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS
Mark Iwamoto, Zoning Inspector

Bess Jennings
Page 7
October 2, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

PLANNING DEPARTMENT
COUNTY OF HAWAII

2015 AUG 24 PM 4:17

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

MEMORANDUM

DATE: August 20, 2015

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

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

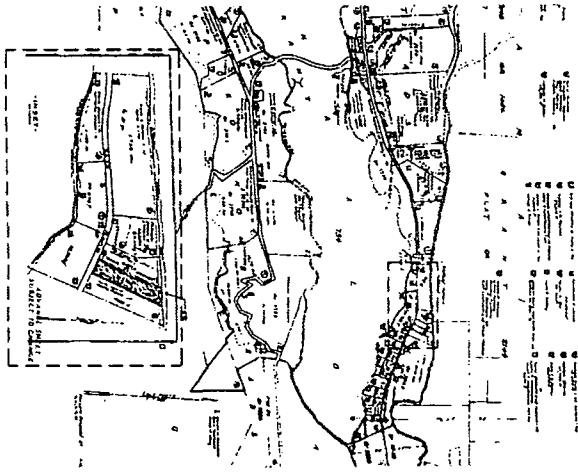
SUBJECT: Application: Variance VAR-15-000302
Applicant: BESS JENNINGS
Owner: BESS JENNINGS A LVG TRST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Side (Northwest) Yard
Setback and Open Space Requirement)

TMK: 2-7-005:040, Lot 10C

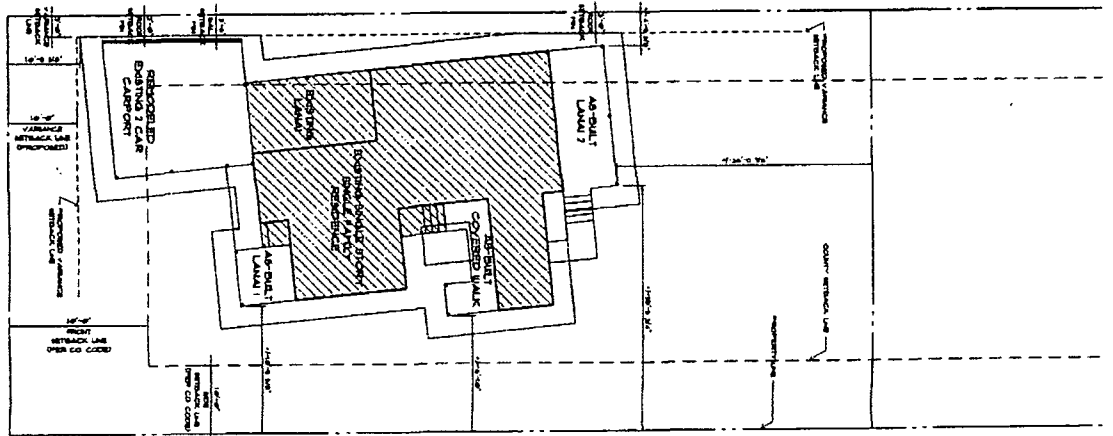
Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.



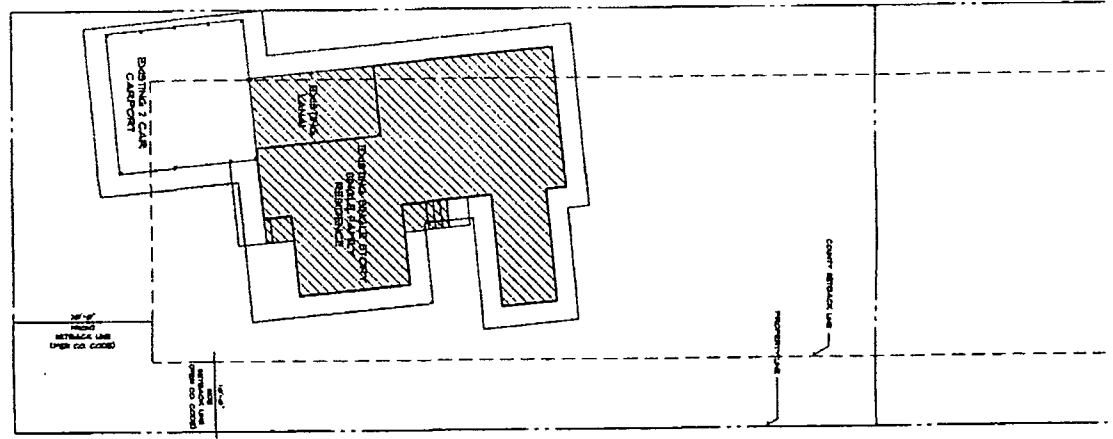
LOCATION PLAN 5
N.T.S.



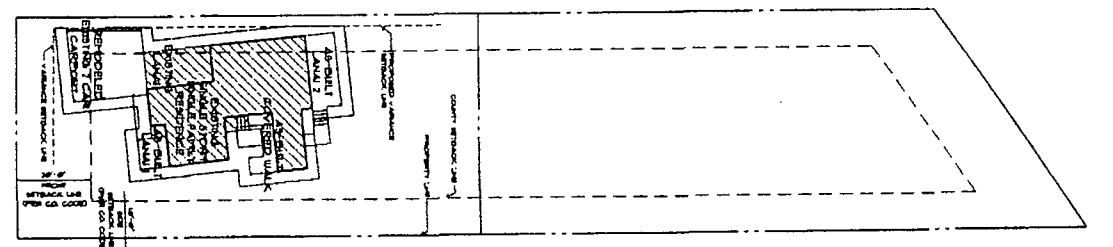
VICINITY MAP 4
1" = 150'-0"



ENLARGED PROPOSED PARTIAL SITE PLAN 3
1" = 8'-0"



ENLARGED EXISTING PARTIAL SITE PLAN 2
1" = 8'-0"



PROPOSED SITE PLAN 1
1" = 15'-0"

2
VICINITY MAP
SITE PLAN
24"x36" original
OF ELEVEN SHEETS

STAMP

REV	DATE	ISSUED BY	POINT SET

JENNINGS RESIDENCE
27-360 KAIHE ROAD, HILO, HAWAII 96720
TMK# (3)2-7-005-040
DESS A. JENNINGS, LVG TRUST
81A KAIWUKI RD, HILO, HI 96720
808-X-XX-XXXX

KEALI BECK
P.O. BOX 1431
HILO, HAWAII 96720
7808-454-4184
F 808-922-4043
lbeck@larcoversultants.com

PA
76 SEP 13 AM 10:10

County of Hawaii

HAWAII COUNTY DEPARTMENT OF PUBLIC WORKS
BUREAU OF BUILDING CONSTRUCTION & INSPECTIONS
BUILDING PERMIT

Total Valuation \$ 22,000
Total Fee \$ 69.00
Tel. No. 964-1803

Legal Owner MIE & MRS. JAMES SADAYASU Address KALELE

Lessee, Tenant _____ Address _____ Tel. No. _____

Plans By HPK Address 380 KANOELEKUA Tel. No. 935-0875

Builder WILLIAM WHALEY 15-06042 Address AHUALOA Tel. No. 775-0366
Lic. No. or Exempt No.

Plumbing Contractor LATER Address _____ Tel. No. _____

Electrical Contractor LATER Address _____ Tel. No. _____

To construct and/or repair, etc: all in accordance with State Laws, and Ordinances of the County of Hawaii, to-wit:

Class of Work: New Addition Alteration Repair Move Demolition Reconstruction

(CONSTRUCTION SITE) _____ (ST. NO.) KALELE, UNIMP. RD. - (STREET) S. HILLO, HAWAII (DISTRICT)

Now Occupied as RESIDENCE - DWELL'G To Be Occupied as NEW DWELL'G Type 1 Constr. Occupancy 1 Stories 1 Fire Zone No. 3 Zone A-10A Lot Area 15,556 sq. ft.

Dimensions 20'x44', 16'x12'; Floor Area 892 sq. Ft.; Roof Overhang 3'-0" Ft.; Walls T & G; Floor oak; Ceiling GYP. B'D

Partitions T & G; Roof GALV. IRON.; Basement Floor -

Foundation POST & PIER; Kind of Toilets PAT.; Connection to Sewer -

To Cesspool 10'-0" Feet; Distance between walls of this and the nearest building on the same property -

Distance to nearest interior lot boundary 10'-0"

The free clearance between the bottom of floor joists and ground 20" MIN. Ft. Construction to be completed on or about 120 WORK'G DAYS

REMARKS:

EXIST'G DWELL'G TO BE REMOVED FOR NEW DWELL'G.
EXISTING CARPORT & PUDO AREA TO REMAIN.

WARNING: PERMIT PLACARD MUST BE POSTED ON THE SITE OF THE WORK.

Approved: 9/8/76 [Signature]
Date _____ 19____
DIRECTOR, COUNTY PLANNING COMMISSION

Date _____ 19____
AGENT, STATE BOARD OF HEALTH

Date _____ 19____
STATE DEPUTY FIRE MARSHAL

Date 9/9/76 [Signature]
Date _____ 19____
BUREAU HEAD

NOTICE

Separate permits are required for electrical, plumbing, gas and signs.

This permit becomes null and void if work or construction authorized is not commenced within 60 days, or if construction or work is suspended or abandoned for a period of 120 days at any time after work is commenced.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all County ordinances and State laws regulating building construction.

X [Signature] 9/8/76
SIGNATURE (OWNER OR AGENT) DATE

DATE OR DATES WHEN READY FOR INSPECTION

____ 19____
____ 19____
____ 19____

DATE INSPECTED

/ / 19____ INSPECTOR _____
/ / 19____ INSPECTOR _____
/ / 19____ INSPECTOR _____

B No. 762011

3rd. DIVISION

Z	S	PL	PAR	LOT
2	7	5	40	