

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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101 Pauahi Street, Suite 3
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April 4, 2016

John L. Hetherington
Hetherington Architect LLC
73-4428 Mamalahoa Highway
Kailua-Kona, HI 96740

Dear Mr. Hetherington:

SUBJECT: Application: Variance – VAR-16-000339
**Applicant: JOHN L. HETHERINGTON/
HETHERINGTON ARCHITECT**
Owner: WEST FAMILY TRUST (DEBRA K. WEST, TRUSTEE)
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1,
Section 25-5-7 Minimum Yards (Encroachment into the
Northeast Front Yard Setback)**
Tax Map Key: 7-6-022:075, Lot 131

The Planning Director certifies the **approval** of Variance No. 16-000339, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 18.92-foot front (northeast) yard setback, in lieu of the required 20-foot front yard setback. These exceptions are in lieu of the required 20-foot front yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-1.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 15,002 square feet of land, is located in the Komohana Kai Subdivision, situated at Holualoa 1st and 2nd, North Kona, Hawai'i. The subject property's street address is 75-6334 Leone Street.
2. **Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use.** Urban.
4. **Required Setback.** 20-feet front, 10-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. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on December 28, 2015, 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 encroaching into the front (northeast) yard setback. **(See attached – Exhibit A)**

The survey map shows that the portion of the single-family dwelling encroaches 1.08 feet into the 20-foot front (northeast) yard setback. The encroachment of the single-family dwelling leaves a minimum 18.92-foot front (northeast) yard setback in lieu of the required 20-foot front yard setback requirement.

There is a clerical error on survey map depicting the single-family dwelling as two story dwelling when it is a single story dwelling.
6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (896668) was issued on November 22, 1988, for the construction of a 3-bedroom and 2-bath, single-family dwelling.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated January 22, 2016. **(See attached memorandum – Exhibit B)**
 - b. No comments received from the Hawaii County Public Works Department - Building Division (Kona).
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on January 15, 2016 and February 5, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on January 14, 2016.
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.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated October 7, 2015 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 April 7, 2016.

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 1.08 feet into the 20-ft. front (northeast) yard setback. The encroachment of the single-family dwelling leaves a minimum 18.92-foot front (northeast) yard setback in lieu of the required 20-foot front yard setback requirement.

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 problem to occur.

It appears that the single-family dwelling constructed nearly 25 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 criterion **(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 front yard open space 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. This alternative would be deemed unreasonable, especially when the current owners were under the impression that the open lanai was in compliance with all County requirements. Also, any structural or design correction to the open lanai to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachments are within the front yard open space, to consolidate the subject property with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard open space are not viable options. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

(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's 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.

The encroachment of the single-family dwelling resulting with a minimum of 18.92-foot front yard setback still allows for adequate air circulation.

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. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding 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 Property Owners.

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 built upon the subject property (LOT 131) will not meet the minimum front 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 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 farm 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/expansion and permitted uses shall be subject to State Law and County Ordinances and Regulations pertaining to setback, 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-15-000339 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

\\COH33\planning\public\Admin Permits Division\Variances From CoH02\Zone7\VAR15-000339TMK7-6-022-075 WestFamilyTrust.rtf

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

MAP SHOWING EXISTING CONDITIONS UPON

LOT NO. 131
 of "KOMOHANA KAI, UNIT II" File Plan 1737
 Being a Portion of File Plan 1737 at Holualoa 1st and 2nd and 3rd,
 North Kona, County of Hawaii Island of Hawaii and State of Hawaii
 TMK No. (3) 7-6-022-075

TRUE NORTH

NOTE: BASIS OF AZIMUTH DERIVED
 USING SOKKIA GPS SYSTEM

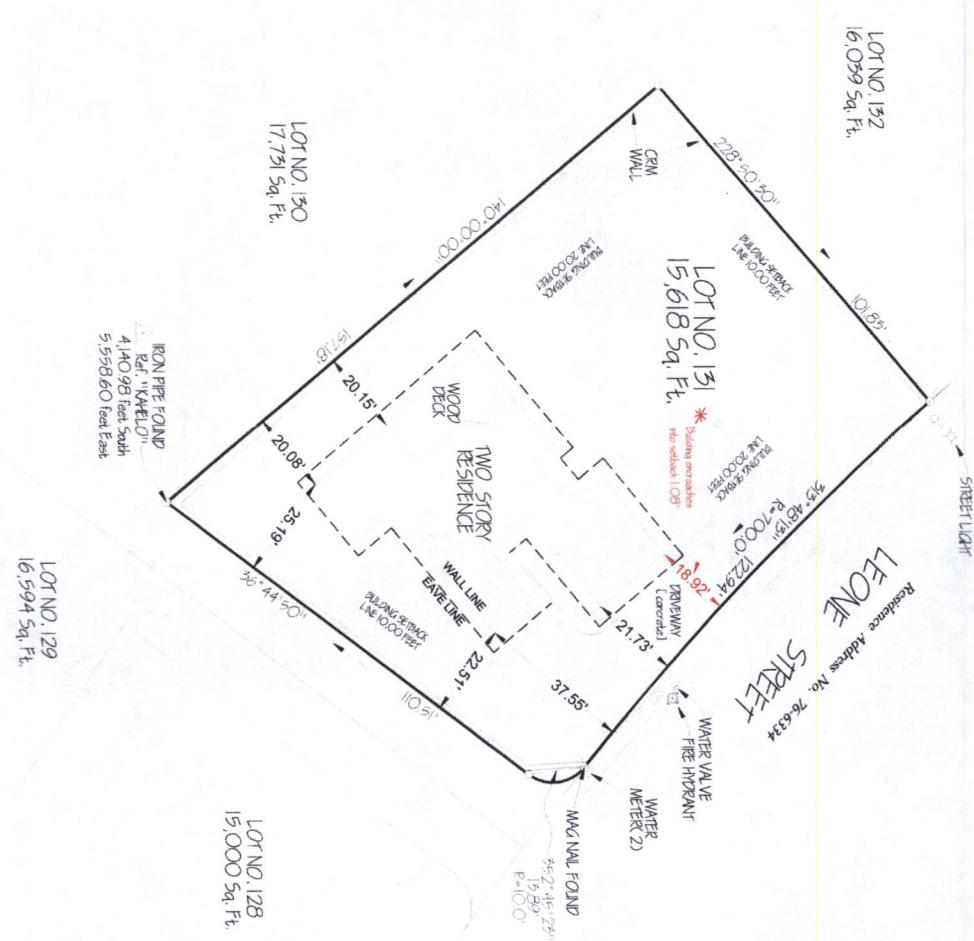
NOTE: ALL CORNERS ARE FOUND
 BY RGN PIPES IN CONCRETE
 UNLESS OTHERWISE NOTED

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

NOTES:

- 1) No boundary encroachments were found.
- * 2) Violations of County zoning set-back 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 September 14th, 2015.
- 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.



| LEGEND | |
|----------|---------------|
| [Symbol] | UTILITY BOXES |
| [Symbol] | FELCO |
| [Symbol] | WATER METER |
| [Symbol] | HT |
| [Symbol] | CRM WALL |
| [Symbol] | CONCRETE |

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
 LICENSED PROFESSIONAL SURVEYOR
 No. 10785
 HAWAII U.S.A.

Thomas G. Pattison

THOMAS G. PATTISON
 Hawaii License No. 10743
 September 16th, 2015--Job 15384

68-1125 North Kaniolu Drive • Unit 906
 Kaneohe Hawaii 96743 Phone 327-9439

PATTISON LAND SURVEYING, INC.

**EXHIBIT
 A**



2016 JAN 22 PM 1 31

PLANNING DEPARTMENT
COUNTY OF HAWAII

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

MEMORANDUM

DATE: January 22, 2016

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

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

SUBJECT: **Application: Variance – VAR 16-000339**
Applicant: JOHN L. HETHERINGTON
Owner: WEST FAMILY TRUST
Request: Variance from Chapter 25, Zoning, Article 5 Division 1,
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The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD: VAR 16-000339.eh

EXHIBIT
B

