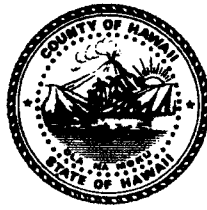


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
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

May 2, 2016

Carol Annette Koziol  
5750 Via Real, Unit 201  
Carpinteria, CA 93013

Dear Ms. Koziol:

**SUBJECT: Application: Variance - VAR-16-000347**  
**Applicant: CAROL ANNETTE KOZIOL**  
**Agent: CYNTHIA D. HARRISON/CLARK REALTY CORP.**  
**Owner: CAROL ANNETTE KOZIOL**  
**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 Northwest Rear and  
Side Yard Setback)**

**Tax Map Key: 1-5-026:221; Lot 496**

The Planning Director certifies the **approval** of Variance 16-000347, subject to conditions. The variance will allow for the single-family dwelling to remain on subject property with a minimum 13.20-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 10.5-foot side (northwest) yard open space, in lieu of the required 14-foot side open space. It will also allow for a minimum 14.7-foot rear (northwest) yard setback to a minimum of 17.50-foot rear (northwest) yard setback in lieu of the required 30-foot rear yard setback and associated roof eave projection resulting with a 12-foot rear (northwest) yard open space in to a minimum of 15.4-foot rear (northwest) yard open space lieu of the required 24-foot side yard open space requirement.

These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space and the required 30-foot rear yard setback and 24-foot rear 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 43,560 square feet (1 acre) and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1905 14<sup>th</sup> Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-foot front and rear; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 20, 2015. The variance application's survey plan, prepared by Daniel I. Berg L.P.L.S. (dlb & Associates) denotes that the tool/storage shed was built into the side (southwest) yard setback and associated side yard open space. **(See attached survey map – Exhibit A)**

The plot plan shows that the single-family dwelling encroaches 6.8 feet into the 20-foot side (northwest) yard setback and 3.5 feet into the 14-foot side (northwest) yard open space. The single-family dwelling also encroaches 12.5 feet to 15.3 feet into the 30-foot rear (northwest) yard setback and 8.6 feet to 12 feet into the 24-foot rear (northwest) yard open space.

The encroachment leaves a minimum 13.20-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 10.5-foot side (northwest) yard open space, in lieu of the required 14-foot side open space. It will also allow for a minimum 14.7-foot rear (northwest) yard setback to a minimum of 17.50-foot rear (northwest) yard setback in lieu of the required 30-foot rear yard setback and associated roof eave projection resulting with a 12-foot rear (northwest) yard open space in to a minimum of 15.4 foot rear (northwest) yard open space.

7. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#032113) was issued on October 27, 2003 to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 29, 2016. **(See attached memorandum – Exhibit B)**
  - b. No comments received from the Department of Public Works Building Division.
9. **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 March 7, 2016 and March 25, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 16, 2016.

- 10 **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or 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 tool/storage shed into the 25-foot side (southwest) yard setback and into the 15-foot side (southwest) yard open space as required by the Zoning Code.

The plot plan shows that the single-family dwelling encroaches 6.8 feet into the 20-foot side (northwest) yard setback and 3.5 feet into the 14-foot side (northwest) yard open space. The single-family dwelling also encroaches 12.5 feet to 15.3 feet into the 30-foot rear (northwest) yard setback and 8.6 feet to 12 feet into the 24-foot rear (northwest) yard open space.

The encroachment leaves a minimum 13.20-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 10.5-foot side (northwest) yard open space, in lieu of the required 14-foot side open space. It will also allow for a minimum 14.7-foot rear (northwest) yard setback to a minimum of 17.50-foot rear (northwest) yard setback in lieu of the required 30-foot rear yard setback and associated roof eave projection resulting with a 12-foot rear (northwest) yard open space into a minimum of 15.4 foot rear (northwest) yard open space

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 original dwelling improvements constructed in 2008 nearly 8 years ago, and subsequent construction permits were issued by the County for the existing single-family dwelling and closed under valid building permits on March 26, 2008. 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.

Ms. Carol Annette Koziol

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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 side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the tool/storage shed denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side and rear properties which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. 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.

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 has been in existence for approximately 8 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 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.

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.

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 496) will not meet the minimum 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 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 built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code,

Ms. Carol Annette Koziol  
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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 shall not be approved for the subject property, subject to the 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-16-000347.

Sincerely,



DUANE KANUHA  
Planning Director

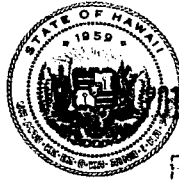
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xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

cc: Cynthia D. Harrison, Realtor  
Clark Realty Corporation  
99 Aupuni Street, Suite 118  
Hilo, Hawai'i 96720





2016 MAR 30 PM 3 44

PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

MEMORANDUM

DATE: March 29, 2016

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

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

SUBJECT: **Application: Variance – VAR 16-000347**  
**Applicant: CAROL ANNETTE KOZIOL**  
**Owner: CAROL ANNETTE KOZIOL**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,  
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**Tax Map Key: 1-5-026:221; Lot 496**

Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the following:

- c. The location of all existing wastewater systems.

**EXHIBIT**

*B*

