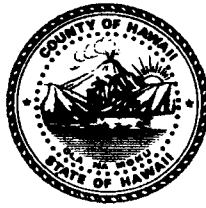


William P. Kenoi
Mayor



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
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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 22, 2016

Keith and Barbara Rasmussen
96 Kaiulani Street
Hilo, Hawaii 96720

Dear Mr. & Mrs. Rasmussen:

SUBJECT: Application: Variance - VAR 16-000362
Applicant: KEITH AND BARBARA RASMUSSEN
Owner: RASMUSSEN FAMILY 2002 TRUST/KEITH AND BARBARA RASMUSSEN
Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into South Front Yard Setback)
Tax Map Key: 2-3-015:042; Lot B

The Planning Director certifies the **approval** of Variance 16-000362, subject to conditions. The variance will allow for the single-family dwelling to remain on subject property with a minimum 18.6-foot front (south) yard setback, in lieu of the required 20-foot front (south) yard setback requirement and associated roof eave projection resulting with a 11.1-foot front (south) yard open space in lieu of the required 14-foot open space requirement. These exceptions are in lieu of the required 20-foot front yard setback and 14-foot front 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 1.3304 acres and is situated at Koloiki, Piihonua, South Hilo, Hawai'i. The subject property's street address is 96 Kaiulani Street.

2. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-foot front and rear; 10-feet for sides;
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 31, 2016. The variance application's survey plan was prepared by Richard Sunden, L.P.L.S., and denotes that the single-family dwelling built into the front (west) yard setback. **(See Exhibit A- Site Plan)**

The site plan shows that portion of the single-family dwelling encroaches 1.4 feet into the 20-foot front (south) yard setback and the associated roof eave encroaches 2.90 feet into the front (south) yard open space.

The encroachment leaves the single-family dwelling with a minimum 18.6-foot front (south) yard setback, in lieu of the required 20-foot front yard setback and associated roof eave projection resulting with a 11.1-foot front (south) yard open space in lieu of the required 14-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#941456) was issued on October 10, 1994 for a single-family dwelling consisting of 2 bedrooms, 2-1/2 baths, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated April 12, 2016. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. Department of Public Works- Building Division memorandum dated June 2, 2016. "Reviewed with no comments."
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 April 16, 2016 and April 19, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 19, 2016.
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.

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated April 7, 2016 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 June 24, 2016.

GROUNDNS 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 single-family dwelling into the 20-foot front (south) yard setback.

The site plan shows that portion of the single-family dwelling encroaches 1.4 feet into the 20-foot front (south) yard setback and the associated roof eave encroaches 2.90 feet into the front (south) yard open space.

The encroachment leaves the single-family dwelling with a minimum 18.6-foot front (south) yard setback, in lieu of the required 20-foot front yard setback and associated roof eave projection resulting with a 11.1-foot front (south) yard open space in lieu of the required 14-foot open space requirement.

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 1973, nearly 43 years ago, and subsequent construction permits were issued by the County for the existing open carport and closed under valid building permits. 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.

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 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 open carport 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 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.

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.

The encroachment of 1.4 feet into the front (south) yard setback and resulting in an 18.6-foot front yard setback still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

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 43 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.

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 B) will not meet the minimum front 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. An Ohana or Farm Dwelling permit 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.
4. 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.
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.

Keith and Barbara Rasmussen

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June 22, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-16-000362.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is fluid and cursive, with the first name "Duane" being larger and more prominent than the last name "Kanuha".

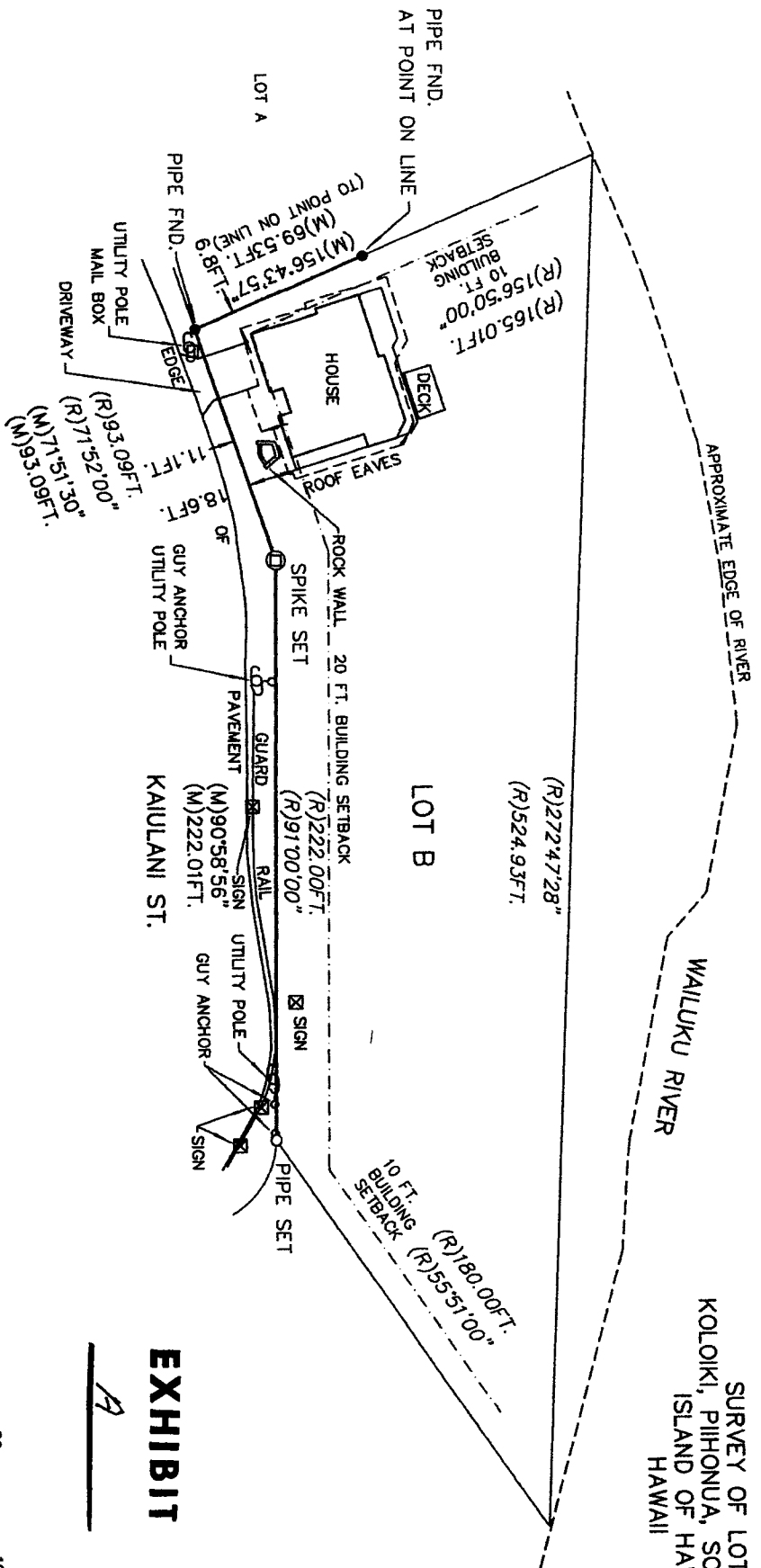
DUANE KANUHA
Planning Director

LHN/SG:nci

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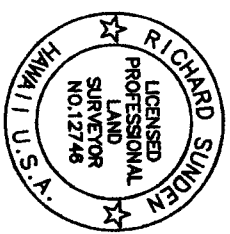
xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

SURVEY OF LOT B,
KOLOIKI, PIHONUA, SOUTH HILO,
ISLAND OF HAWAII
HAWAII

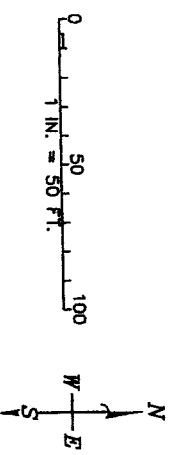


- NOTES:**
1. The field survey was completed on 23 March 2016.
 2. Measured dimensions, labeled (M), show the size of the lot. Record dimensions, labeled (R), are shown for comparison.
 3. The parcel's boundary corners meet expected accuracy for this subdivision.
 4. The attached report explains the results of this survey.

TMK: (3) 2-3-015:042



This work was prepared by me:
Richard Sundén
Richard Sundén
Licensed Professional Land Surveyor
Hawaii License LS-12746
Expiration Date: 30 April 2016



EXHIBIT

24 Mar. 2016
JOB 16016

Chartwell
LAND SURVEYING LLC
HC 1 Box 4058
Kalaheo HI 96749
(808) 896-9157
Email: info@chartwell-hi.com