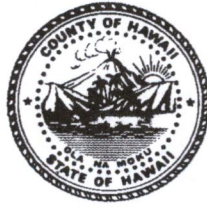


William P. Kenoi  
Mayor



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

August 30, 2016

John Knoebber, Attorney at Law  
P. O. Box 390466  
Keauhou, HI 96739

Dear Mr. Knoebber:

**SUBJECT: Application: Variance - VAR 16-000368**  
**Applicant: JOHN KNOEBBER, ATTORNEY AT LAW**  
**Owner: ROBERT L. HARRISON AND NORMA J. HARRISON**  
**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 North Rear Yard Open Space)**  
**Tax Map Key: 7-3-031:044 Lot 130**

---

The Planning Director certifies the **approval** of Variance No. 16-000368, subject to variance conditions. The variance will allow portion of the two-story single-family dwelling to remain with a minimum 17.53-foot rear (North) yard setback in lieu of the required 20-foot rear (North) yard setback and associated roof eave projection resulting with a minimum 9.04-foot rear (North) yard open space to a minimum 13-foot rear (North) yard open space in lieu of the required 14-foot open space requirement. These exceptions are in lieu of the required 20-foot rear yard setback 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, consisting of approximately 10,680 square feet of land, is located in the Kona Palisades Subdivision, situated at Kalaoa 5th, North Kona, Hawai'i. The subject property's street address is 73-4326 Imo Place.
2. **Zoning.** Agricultural – 5 acres (A-5a).
3. **State Land Use.** Urban.

4. **Required Setback.** 20-ft. front and rear, 10-ft. for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 29, 2016, 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 two-story single-family dwelling built into the rear (north) yard setback and rear (north) yard open space. (See attached memorandum – Exhibit A)

The site plan shows that portion of the two-story single-family dwelling encroaches 2.47 feet into the 20-foot rear (North) yard setback and the associated roof eave projection encroaches with a minimum of one (1) foot to a minimum of 4.96-feet into the 14-foot rear (North) yard open space.

The encroachment leaves the two-story single-family dwelling with a minimum 17.53-foot rear (North) yard setback in lieu of the required 20-foot rear (North) yard setback and associated roof eave projection resulting with a minimum 9.04-foot rear (North) yard open space to a minimum 13-foot rear (North) yard open space in lieu of the required 14-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (885640) was issued on July 12, 1988, for the construction of a 4-bedroom and 3-bath, two-story single-family dwelling.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated February 18, 2016. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments received from the Hawaii County Public Works Department-Building Division.
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 May 20, 2016 and August 11, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 19, 2016.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated May 5, 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 August 31, 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.

**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 site plan shows that portion of the two-story single-family dwelling encroaches 2.47 feet into the 20-foot rear (North) yard setback and the associated roof eave projection encroaches with a minimum of one (1) foot to a minimum of 4.96-feet into the 14-foot rear (North) yard open space.

The encroachment leaves the two-story single-family dwelling with a minimum 17.53-foot rear (North) yard setback in lieu of the required 20-foot rear (North) yard setback and associated roof eave projection resulting with a minimum 9.04-foot rear (North) yard open space to a minimum 13-foot rear (North) yard open space in lieu of the required 14-foot open space requirement.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the open lanai encroachment problem to occur.

It appears that the two-story, single-family dwelling constructed nearly 28 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 criteria (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 rear yard setback and 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.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by another party, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

*(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 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.

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 18 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 upon the Subject property (LOT 130) will not meet the minimum rear 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 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 two-story, 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 and permitted uses shall be subject to State Law and County Ordinances and Regulations pertaining to 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-16-000368 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR16-000368\TMK7-3-031-044Harrison.doc

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

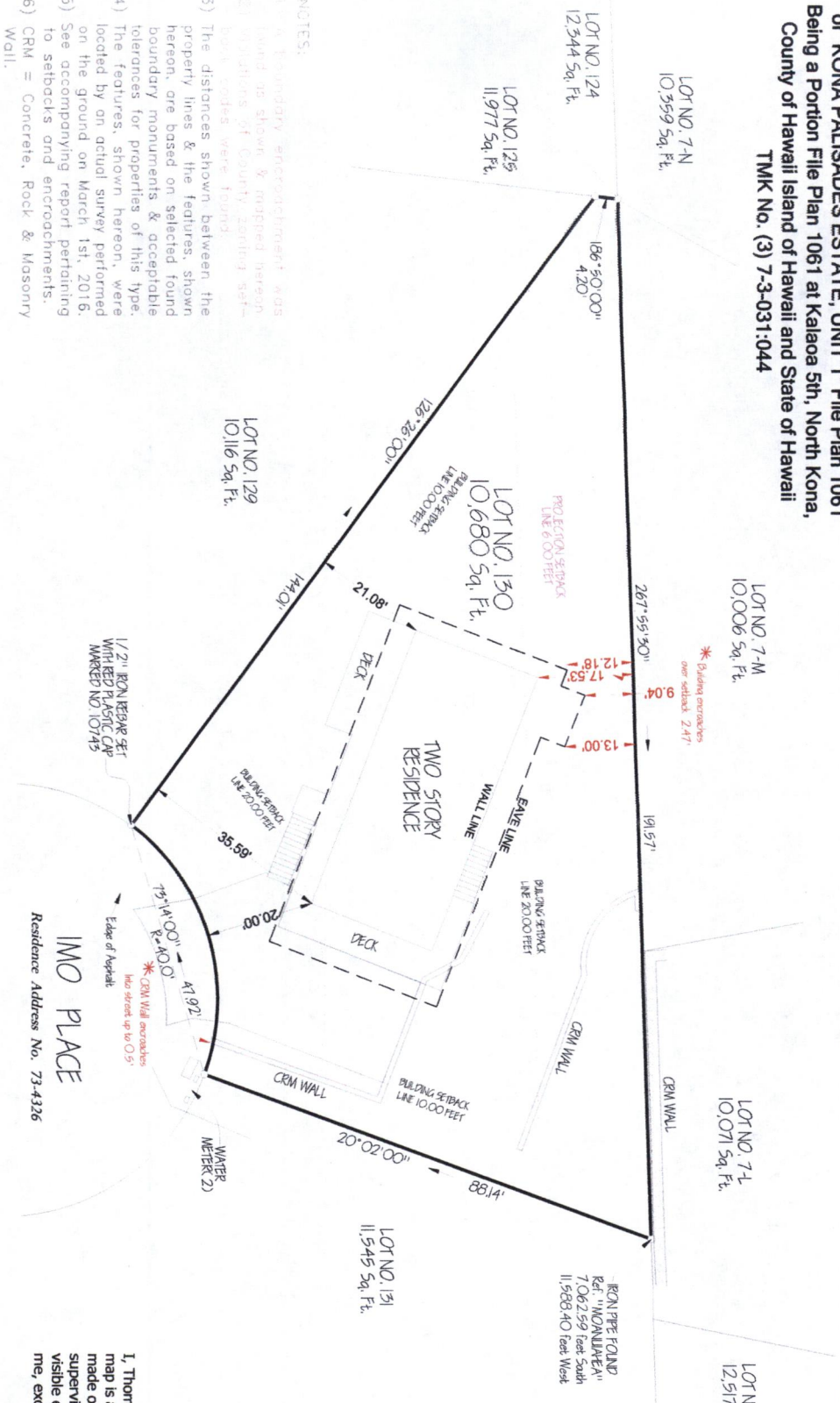
# EXHIBIT

## MAP SHOWING EXISTING CONDITIONS UPON

LOT NO. 130

of "KONA PALISADES ESTATE, UNIT 1" File Plan 1061  
Being a Portion File Plan 1061 at Kalaea Stn, North Kona,  
County of Hawaii and State of Hawaii  
TMK No. (3) 7-3-031:044

TRUE NORTH



LEGEND	
	WATER METER
	CONCRETE
	CRM WALL
	HIC

SCALE ONE INCH  
EQUALS 20.00 FEET  
Graphical Scale is in Feet

- NOTES:
- \* CRM Wall encroachment was found as shown & mapped hereon.
  - \* Encroachments of County zoning setbacks were found.
  - 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.
  - The features, shown hereon, were located by an actual survey performed on the ground on March 1st, 2016.
  - See accompanying report pertaining to setbacks and encroachments.
  - CRM = Concrete, Rock & Masonry Wall.

NOTE: BASIS OF AZIMUTH DERIVED USING SOKKIA GPS RTK SYSTEM

NOTE: ALL CORNERS ARE FOUND 6" IRON PIPES IN CONCRETE UNLESS OTHERWISE NOTED

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

**-COPY-**

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.

PATTISON LAND SURVEYING, INC.

THOMAS G. PATTISON  
Hawaii License No. 10743  
March 2nd, 2016--Job 16077

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. All dimensions are shown in feet and decimal parts thereof. No dimension is to be assumed by scaling.

68-1125 North Kaniuku Drive • Unit 906  
Kamuela Hawaii 96743 Phone 327-9439