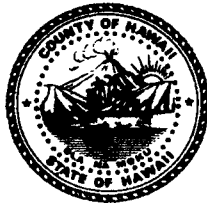


William P. Kenoi
Mayor



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 9, 2016

Ronald A. Cole
75-6088 Kaanee Place
Kailua-Kona, HI 96740

Dear Mr. Cole:

SUBJECT: Application: Variance – VAR-16-000369
Applicant: RONALD A. COLE
Owner: RONALD A. COLE
Request: Variance from Chapter 25, Zoning, Article 4, Division 4,
Section 25-4-44(a) Permitted Projections into Yards and
Open Space Requirements (Encroachment into Northwest
Rear Yard Open Space)
Tax Map Key: 7-5-041:065; Lot 11

The Planning Director certifies the **approval** of Variance No. 16-000369, subject to variance conditions. The variance will allow for the detached gazebo to remain with a minimum of 5.75-foot rear (northwest) open space to a minimum of 7.5-foot rear (northwest) yard open space in lieu of the required 10-foot rear yard open space requirement. These exceptions are in lieu of the required 10-foot rear yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 6,188 square feet of land, is located in the Pualani Estates Subdivision, situated at Puapua'aiki 1st, Puapua'anui 1st, North Kona Hawai'i. The subject property's street address is 75-6088 Kaanee Place.
2. **Zoning.** Single-Family Residential – 7,500 square feet (RS-7.5)
3. **State Land Use.** Urban.
4. **Required Setback.** 15-foot front and rear; 8-feet for sides.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on May 5, 2016, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by the owner/applicant (Ronald A. Cole), denotes the portions of open gazebo built into the rear (northwest) yard open space. (See Exhibit A)

The site plan shows that portions of the detached gazebo encroaches 2.5 feet to 4.25 feet into the 10-foot rear (northwest) yard open space.

The encroachment leaves the detached gazebo with a minimum of 5.75-foot rear (northwest) open space to a minimum of 7.5-foot front (northwest) yard open space in lieu of the required 14-foot front yard open space requirement.

The gazebo sets on a platform that is not attached to its foundation and sits on small concrete piers.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2011-0148K) was issued on March 2, 2011, for the construction of a 3-bedroom and 3-bath, single-family dwelling.
7. **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 March 7, 2016 and March 10, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on March 15, 2016.
8. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 25, 2016 and additional time to review the application was required. The applicant/owner granted the Planning Director an extension of time for decision on the Variance Application to August 31, 2016.
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated May 31, 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.
10. **Comments from Surrounding Property Owners or Public.**
 - a. A letter objecting to the variance request from Robert Unkrich dated May 25, 2016.

(See Exhibit B).

- b. A letter objecting to the variance request from Wayne & Alexia Hollopeter dated June 8, 2016. **(See Exhibit C).**
- c. Copy of letter from Pualani Estates Homeowners Association: Letter dated August 24, 2015 granting conditional approval of Gazebo. **(See Exhibit D)**

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 portions of the detached gazebo encroaches 2.5 feet to 4.25 feet into the 10-foot rear (northwest) yard open space.

The encroachment leaves the detached gazebo with a minimum of 5.75-foot rear (northwest) open space to a minimum of 7.5-foot rear (northwest) yard open space in lieu of the required 10-foot rear yard open space requirement.

The minimum setback and clear space requirements are based on 7,500 square foot lot but the subject property is only 6,188 square feet. Therefore, given the size of the subject property (6,188 sq. ft.) and the placement of the existing single-family dwelling limits the area for the placement of the detached gazebo, special and unusual circumstances exist on the subject property which would interfere with the placement of the open gazebo.

The owner stated that he constructed the gazebo addition into the rear of the existing dwelling; which would allow the owners privacy while enjoying the sunshine, open air and existing view of Kona Bay from their backyard.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the gazebo 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 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 gazebo encroachment constructed into the affected rear yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the open gazebo constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Given the size of the subject property, placement of the gazebo into the rear yard is the best available location. Also, any structural or design correction to the gazebo 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.

The open gazebo encroachment into the rear (northwest) yard open space still allows for adequate air circulation and exposure to light.

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.

An objection letter was received from Mr. Unkrich (See Exhibit B) requesting that the variance be denied. Mr. Unkrich's objection states that the gazebo is an unpermitted structure and infringes on his peace and privacy. However, the gazebo does not project into the side yard

setback where Mr. Unkrich's property abuts.

The gazebo consisting of approximately 102.11 square feet does not require a building permit, According to the Hawaii County, Department of Public Works – Building **Chapter 5, Building Article 1. General Provisions. Division 2 Permits. Section 5-19. Permits Required. Exceptions; A permit is not required for: (18)** “One-story, detached accessory structures used as tool and storage sheds, playhouses and similar uses, provide the floor area does not exceed a) 120 square feet; b) does not exceed 600 square feet for agricultural zoned lands.” (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department.) As a result, the applicant is applying for a setback variance from the Zoning Code. Also, the gazebo encroaches into the rear (northwest) yard open space and not into the side (west) yard open space as Mr. Unkrich alleges. The gazebo is located 14 feet from the adjoining side (west) boundary; therefore, it conforms to the 8-foot side yard setback and 4-foot side yard open space requirement. The subject property rear boundary abuts a 14.78 acre vacant parcel zoned Agricultural 5 acres with a State Land Use designation of Agricultural. Placement of the gazebo in the rear yard does not infringe on the adjacent side yard property owner's peace and privacy. It should be noted that the owner of the property that abuts the rear boundary did not file an objection to the variance application.

An additional objection was received on June 13, 2016 from Wayne and Alexia Hollopetter stating that the approval of this variance will set a precedence on future variances. Variances are approved on a case by case basis, requiring the owner/applicant to meet the requirements for set forth in Chapter 25, Zoning Code, Grounds for variance. (Section 25-2-51).

It should be noted that the owner/applicant did receive conditional approval from the Pualani Estates at Kona Community Association (See Exhibit D) for the installation of the gazebo.

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 open gazebo built upon the subject property (LOT 16) 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:

Ronald A. Cole
Page 6
August 9, 2016

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. 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.
4. 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-16-000369 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR16-000369TMK7-5-041-065Cole.doc

xc: Planning Department-Kona
Real Property Tax Division-Kona
Gilbert Bailado, GIS (via email)
Horace Yanagi, Zoning Inspector-Kona (via e-mail)

EXHIBIT

A

KANEE II

R=45'

6'-8"

16'-0" WIDE
DRIVEWAY

EXISTING DWELLING

92.78'

82.94'

5'-0"

5'-0"

7'-0"

20'-0"

10'-0"

10'-0"

5'-5"

PROPOSED
GAZEBO

10'-0"
7'-6"
15'-0"
25'-0"

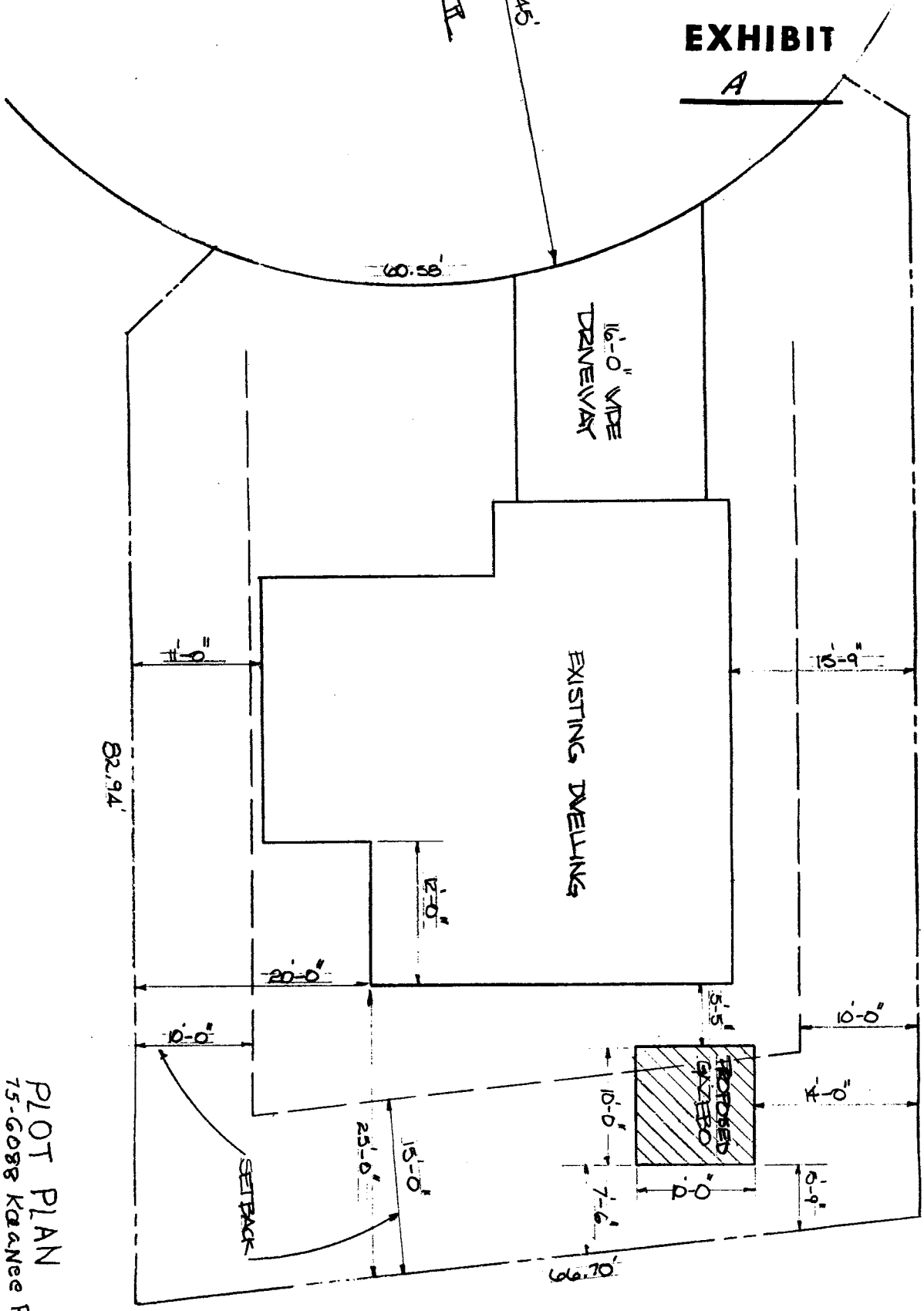
5'-0"

6'-9"

66.70'

SETBACK

PLOT PLAN
75-6088 KANEE P1
0' 10 1/2" - 1'-0"



May 25, 2016

Mr. Duane Kanuha, Director
Mr. Horace Yanagi, Planning Inspector
County of Hawai'i Planning Department
West Hawai'i Office
75-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740

2016 MAY 26 AM 10:52

PLANNING DEPARTMENT
COUNTY OF HAWAII

Dear Mr. Kanuha and Mr. Yanagi:

Subject: Application for Variance submitted by Mr. Ronald Cole
75-6088 Kaanee Place
Kailua Kona, Hawai'i 96740
File # ZCV 2015-101W
TMK: 7-5-041:065, Phase 1, Phase 3, Puapuaaiki 1st & Puapuaanui 1st, North Kona, Hawai'i

This is to request that Mr. Ronald Cole's recent application for a Variance be denied and that current Hawaii County Code Chapter 25 (Zoning Code) be fully enforced.

Mr. Cole built a non-permitted permanent structure in his back yard that is in violation of Hawaii County Zoning Code. He built a raised wooden deck, approximately 12' x 12' and 4' high on a concrete base and then bolted a large gazebo, approximately 10' x 10' onto the deck. He added a permanent railing around the gazebo, rain gutters, lighting, and furniture. The deck is set approximately 3 feet from the rear property line and the gazebo is approximately 5 feet from the rear property line. Also, the deck is set 6 feet from the side yard property line.

I reside immediately next door to the West of Mr. Cole's property and I am directly impacted by his Zoning Violation. Mr. Cole's illegal raised deck and gazebo greatly infringe on my peace and privacy. Mr. Cole and his guests continue to use the raised gazebo and it is extremely disturbing to have them look directly at me when I am trying to relax or BBQ on my lanai. I purchased my home when it was in the development phase in 2011 and have enjoyed it very much until Mr. Cole's Zoning Violations. As soon as I realized what Mr. Cole was building, I filed a formal complaint with the Homeowner's Association and was disappointed that they took no action. In December of 2015, I filed a complaint with your Office. Please deny his application for a Variance.

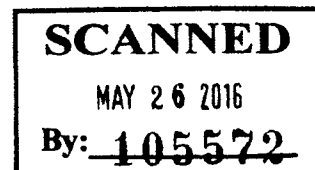
Sincerely



Robert Unkrich
75-6090 Kaanee Place
Kailua Kona, Hawai'i 96740
(808)989-2727
Rj164100@gmail.com

EXHIBIT

B



Tmk-7-5-041:065
VAL 16-000369

2016 JUN 13 AM 11 40

June 8, 2016

Dear Planning Commission:

PLANNING DEPARTMENT
COUNTY OF HAWAII

Case of Ronald A. Cole property at 75-6088 Kaanee Place, Kona Hawaii

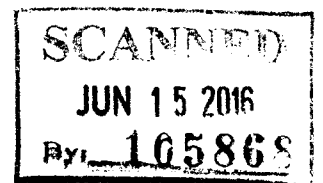
We have concerns about allowing the variance for this case. This will set a precedent for future variances along the back side of all properties within Pualani Estates. If the property adjacent to the north side of Pualani Estates is ever developed in the future it will be hard for you to defend any denial for any other variance requests that might occur. This could effect our view and of course views of all other owners in the Pualani Estates and Hawaii County also. I hope you will not start allowing variances to the laws that have been made for property owners of Hawaii County.

Sincerely,
Wayne and Alexia Hollopeter
75-6092 Kaanee Place
Kona, Hawaii

Wayne + Alexia Hollopeter

EXHIBIT

C





P U A L A N I
E S T A T E S

August 24, 2015

Ronald A. Cole
75-6088 Kaanee Place
Kailua Kona, HI 96740

Re: **Application for Approval of Modification, Additions or Improvements, Pualani Estates at Kona Lot #283/ gazebo.**

Dear owner:

The Pualani Estates Design Committee has reviewed and **conditionally approved** your application to make the above listed improvements on your property in the Pualani Estates community. **This approval is contingent on acceptance of and adherence to the following conditions and requirements.**

The property owner is responsible for ensuring that **all of the drainage patterns on the property are maintained as originally installed** so as not to adversely affect any neighboring properties.

1. Approval is conditional to the homeowner obtaining all city/county/state permits, if applicable. Failure to obtain all city/county/state permits shall cause this approval to become null and void. Homeowner is responsible for knowing and following all city / county/state ordinances, including setbacks.
2. Approval of this request by the Design Committee does not mean the Association shall be responsible for any liability that may arise with regard to this approval.

If you have any questions, please email me at katewinter@pualaniestatesatkona.com.

Sincerely,

EXHIBIT

D

Kate H. Winter, Co-chair, Design Review Committee

Note: Review and approval of this request is made on the basis of aesthetic considerations only and neither the Declarant nor the Managing Agent, nor the Association shall bear any responsibility for ensuring the structural integrity or soundness of these approved modifications or for ensuring compliance with County of Hawaii Building Codes or any other governmental requirements, which are solely the property owner's responsibility. Since the Association has no contractual agreement with the contractor(s), the property owner is completely responsible for ensuring the proper installation of these improvements.

cc: Kunzang Yuthok Management Executive, Pacifica Realty Management

Board of Directors President, Pualani Estates @ Kona Community Association

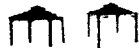
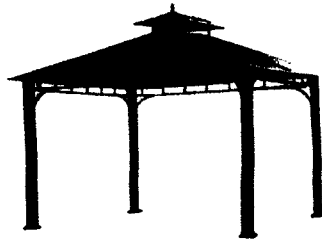
Your Store: Kailua Kona, HI

**allen + roth 121.26-in x 121.26-in x
10.24-ft Aluminum Roof Black Steel
Square Gazebo**

Item #: 401997 | Model #: L-GZ340PC0-5

\$1,148.00

Get 5%* Off Every Day or Special Financing
Minimum Purchase Required**



Description

121.26-in x 121.26-in x 10.24-ft Aluminum Roof Black Steel Square Gazebo

- Powder-coated finish prevents rust and corrosion
- Black steel frame for a striking modern appearance
- Steel canopy for increased durability against the harshest weather conditions
- 1-year limited warranty for peace of mind

Specifications

Material	Steel	Warranty	1-year limited
Actual Exterior Height (Feet)	10.24	Interior Peak Height (Feet)	9.87
Actual Exterior Width (Inches)	121.26	Foundation Length (Feet)	10
Actual Exterior Depth (Inches)	121.26	Foundation Width (Feet)	10
Floor Included	No	Package Length (Inches)	88.98
Manufacturer Color/Finish	Black	Package Width (Inches)	25.2
Color/Finish Family	Black	Package Height (Inches)	17.32
Paintable	Yes	Package Weight (lbs.)	359
Shingles Included	No	Roof Material	Aluminum
Benches Included	No	Roof Shape	Square