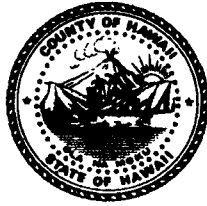


William P. Kenoi
Mayor



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

December 1, 2016

Craig Bailey and Adam Craig McCanna
7752 E 131st Place
Thornton, CO 80602-8446

Dear Sirs:

SUBJECT: Application: Variance - VAR 16-000396
Applicant: CRAIG BAILEY AND ADAM CRAIG MCCANNA
Owner: CRAIG BAILEY AND ADAM CRAIG MCCANNA
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Side (East) Yard Setback and Side (East) Yard Open Space)

Tax Map Key: 6-8-035:090: Lot 87

The Planning Director certifies the **approval** of Variance 16-000396, subject to conditions.

The variance will allow portion of the single-family dwelling to remain on Lot 87, with a minimum 7.58-foot side (east) yard setback to a minimum 8.49-foot side (east) yard setback, in lieu of the minimum required 10-foot side yard setback and a 4.68-foot side (east) yard open space, in lieu of the required 5-foot side (east) open space. It also allows for the detached garage to remain with a 9.62-foot side (east) yard setback.

These exceptions are in lieu of the required 10-foot side yard setback and 5-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 Permitted Projections into Yards and Open Space Requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 10,169 square feet of land, is located within the Kilohana Kai at Waikoloa Subdivision, situated at Waikoloa, South Kohala, Hawai'i. The subject property's street address is 68-3592 Haia Street.

2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use.** Urban.
4. **Setback Requirements.** 20-foot front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The applicants, Craig Bailey and Adam C. McCanna, submitted the variance application, attachments, filing fee, and associated materials on October 3, 2016. The variance application's site plan map is drawn to scale and was prepared by Thomas G. Pattison, L.P.L.S. (Pattison Land Surveying, Inc.), and denotes the single-family dwelling and the detached garage encroaching into the side (East) yard setback and side (East) yard open space. (See Exhibit A)

The site plan prepared by Thomas G. Pattison, L.P.L.S., shows that portion of the single-family dwelling encroaches 0.38 feet to 2.42 feet into the 10-foot side (east) yard setback and the associated roof eave encroaches 0.32 feet into the 5-foot side (east) yard open space. The detached garage encroaches 0.32 feet into the 10-foot side (east) yard setback.

The encroachment leaves the single-family dwelling with a minimum 7.58-foot side (east) yard setback to a minimum 8.49-foot side (east) yard setback, in lieu of the minimum required 10-foot side yard setback and a 4.68-foot side (east) yard open space, in lieu of the required 5-foot side (east) open space. It also leaves the detached garage with a 9.62-foot side (east) yard setback, in lieu of the minimum required 10-foot side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (BK 2015-00229) was issued on February 5, 2015, to the subject property for the construction of a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated February 9, 2016. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments were received from the Department of 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 U.S.P.S. According to these submittals, the first notices were mailed on October 14, 2016, and the second notices were

mailed on October 26, 2016. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 18, 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.

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 criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling and garage into the 10-foot east side yard setback and 5-foot side (east) yard open space.

The site plan prepared by Thomas G. Pattison, L.P.L.S., shows that portion of the single-family dwelling encroaches 0.38 feet to 2.42 feet into the 10-foot side (east) yard setback and the associated roof eave encroaches 0.32 feet into the 5-foot side (east) yard open space. The detached garage encroaches 0.32 feet into the 10-foot side (east) yard setback.

The encroachment leaves the single-family dwelling with a minimum 7.58-foot side (east) yard setback to a minimum 8.49-foot side (east) yard setback, in lieu of the minimum required 10-foot side yard setback and a 4.68-foot side (east) yard open space, in lieu of the required 5-foot side (east) open space. It also leaves the detached garage with a 9.62-foot side (east) yard setback, in lieu of the minimum required 10-foot side yard setback.

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. The single-family dwelling and detached garage was built under Building Permit BK2015-00229, issued on February 5, 2015, with final inspection issued and approved on June 20, 2016. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an

extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

(a) 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 water tank encroachments constructed into the affected rear yard setback 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 single-family dwelling 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.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; 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 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 structural setbacks within a building site 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 and garage 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.

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 existing dwelling and detached garage on the subject property ("LOT 87") does not meet the minimum side (east) yard setback requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following conditions:

The applicant/owner, their assigns or successors shall be responsible for complying with stated conditions of approval.

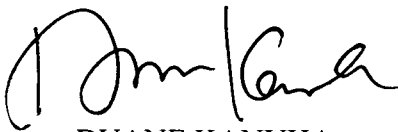
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property 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 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 and detached garage 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

Craig Bailey
Adam McCanna
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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 proceed to declare subject Variance-VAR 16-000396 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone6\VAR16-0003396TMK6-8-035-090Bailey-Mccanna.doc.rtf

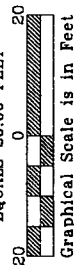
cc: Kona Office
Real Property Tax Office (Kona)
Planning GIS, Gilbert Bailado (via email)

Sarah Korda
J. T. Smith Construction, LLC
665 Malae Place
Hilo, HI 96720

TRUE NORTH



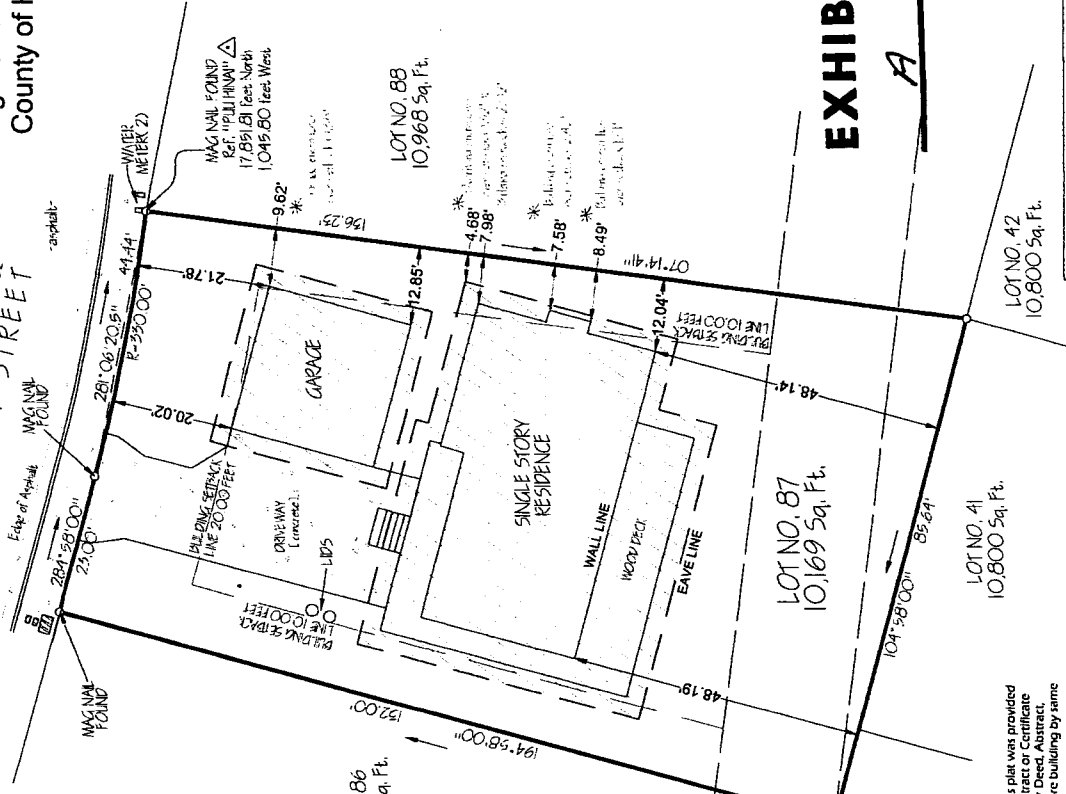
SCALE ONE INCH
EQUALS 20.00 FEET



Graphical Scale is in Feet

MAP SHOWING EXISTING CONDITIONS UPON
LOT NO. 87
of "KILOHANA KAI AT WAIKOLOA-PHASE I" File Plan 2432
Being a Portion of File Plan 2432 at Waikoloa, South Kona,
County of Hawaii Island of Hawaii and State of Hawaii
TMK No. (3) 6-8-035:090

Residence Address No. 68-3592
HAIA STREET



LEGEND	
UTILITY BOXES	
	TELCO
	WATER METER
	HT
	TV
	CONCRETE

NOTE: BASIS OF AZIMUTH DERIVED
USING SOKKIA OPTIK SYSTEM

NOTE: ALL CORNERS ARE FOUND
BY TOTAL STATION METHOD
UNLESS OTHERWISE NOTED

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

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.

-COPY-

THOMAS G. PATTISON
Hawaii License No. 10743
September 30th, 2016--Job 16368

(88-1125 North Kaniuku Drive • Unit 906
Kamuela Hawaii 96743 • Phone 327-9439

PATTISON LAND SURVEYING, INC.

EXHIBIT

A

- 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 28th, 2016.
 - 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 the deed. Accuracy is based on the official plat and the deed. The description on this plat was provided to us by the client, and should be compared to the deed. Abstract or Certificate of Title and other public records should be checked for any other encroachments, easements, and other rights or interests in the property. All points before building by same need to be assumed by setting.

EASEMENT 24.120 FT. WIDE
FOR DRAINAGE PURPOSES
17,922 Sq. Ft.

LOT NO. 86
10,032 Sq. Ft.

LOT NO. 88
10,968 Sq. Ft.

LOT NO. 87
10,169 Sq. Ft.

LOT NO. 40
10,500 Sq. Ft.

LOT NO. 41
10,800 Sq. Ft.

LOT NO. 42
10,800 Sq. Ft.