

Harry Kim  
Mayor



Michael Yee  
Director

Duane Kanuha  
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

February 8, 2019

Ms. Brandi Young, Manager  
American Drafting and Design, LLC  
PO Box 1459  
Roswell, GA 30077

Dear Ms. Young:

**SUBJECT: Application: Variance - VAR 18-000496**  
**Applicant: BRANDI YOUNG/AMERICAN DRAFTING & DESIGN, LLC**  
**Owner: LUOMA JAMES D/E DIANE TRST.**  
**Variance from Chapter 25, Zoning,**  
**Article 5, Division 7, Section 25-5-76, Minimum Yards**  
**(Encroachment into Northwest Rear Yard Setback)**  
**Tax Map Key: 4-3-011:022; Lot 38**

The Planning Director certifies the **approval** of Variance No. 18-000496, subject to variance conditions. The variance will allow portion of the detached garage with 2<sup>nd</sup> level recreation room to remain with a minimum 28.34-foot northwest rear yard setback, in lieu of the required 30-foot rear yard setback. These exceptions are in lieu of the required 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

The variance will also allow the detached garage with 2<sup>nd</sup> level recreation room to remain with a minimum 29.26-foot rear yard setback, encroaching 0.74 feet (8.88) inches) into the rear (northwest) yard setback to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy.

**BACKGROUND AND FINDINGS**

- 1 The subject property consists of 5 acres and is located in Pohakea Homesteads, Pohakea, Hamakua, Hawai'i . The subject property's street address is 43-2127 Pohakea Mauka Road.
2. **County Zoning.** Agricultural – 5 acres (A-5a).

3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-foot front and rear; 20-foot for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 23, 2018. The variance application's revised survey map dated January 20, 2019 was prepared by Thomas G. Pattison (Pattison Land Surveying, Inc.) and denotes a portion of the enclosed garage with 2<sup>nd</sup> story recreation room built into the northwest rear yard setback. **(See Exhibit A-Site Plan)**

The revised survey map dated January 20, 2019, prepared by Thomas Pattison L.P.L.S., (Pattison Land Surveying, Inc.), shows a portion of the detached garage with 2<sup>nd</sup> level recreation room encroaching with a minimum 0.74 feet (8.88) inches to a minimum of 1.66 feet into the 30-foot northwest) rear yard setback.

The encroachment leaves the detached garage with 2<sup>nd</sup> level recreation room with a minimum 28.34 -foot to a minimum of 29.26 rear (northwest) yard setback in lieu of the required 30-foot rear yard setback.

6. **County Building Records. County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits:
  - a. Building Permit - 032072 was issued for the construction of a single-family dwelling consisting of: 3 bedroom, 2 bath, living room, kitchen and dining area on October 20, 2003 and finalized on July 26, 2018.
  - b. Building Permit-032596 was issued for the construction of a two car garage on the first level and a recreation room with 1 bath on the second level on December 24, 2003 and finalized on January 22, 2013.
  - c. Building Permit-B2010-1127H was issued for an as-built greenhouse on July 28, 2010 and finalized on January 22, 2013.
  - d. Building Permit-BH2012-000742 was issued for detached storage building on August 30, 2012 and finalized on February 11, 2013.

**7. Agency Comments and Requirements.**

- a. Department of Health memorandum dated November 19, 2018." The Health Department found no environmental health concerns with regulatory implications in the submittal
- b. Department of Public Works Building Division memorandum dated November 1, 2018:

“At the time of completion, the subject completed with all building regulations that were in effect.”

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 October 23, 2018 and November 9, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 21, 2018.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant’s variance application was acknowledged by letter dated November 1, 2018 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 February 8, 2019.

### 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 detached garage with 2<sup>nd</sup> level recreation room into the 30-foot northwest rear yard setback

The revised survey map dated January 20, 2019, prepared by Thomas G. Pattison L.P.L.S. (Pattison Land Surveying, Inc.), shows a portion of the detached garage with 2<sup>nd</sup> level recreation room encroaching with a minimum 0.74 feet (8.88 inches) to a minimum of 1.66 feet into the 30-foot northwest rear yard setback.

The encroachment leaves a minimum 28.34-foot to a minimum of 29.26 into the 30-foot rear yard setback in lieu of the required 10-foot southeast 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. It

appears that the detached garage improvements constructed in 2003, approximately 15 years ago, and subsequent construction permits were issued by the County for the existing detached garage with 2<sup>nd</sup> level recreation room were closed under valid building permits. It also appears that past building permit inspections of the premises, by the affected agencies during construction of the detached garage 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 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 detached garage with 2<sup>nd</sup> level recreation room was in compliance with all County requirements. Any structural or design correction of the detached garage with 2<sup>nd</sup> level recreation room to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the rear yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. 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 detached garage with 2<sup>nd</sup> level recreation room has been in existence for approximately 6 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.

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.

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 C") will not meet the minimum front and 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,

Ms. Brandi Young, Manager  
American Drafting and Design, LLC

Page 6

February 8, 2019

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 detached garage with 2<sup>nd</sup> level recreation room 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.
4. 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.
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-18-000496

Sincerely,



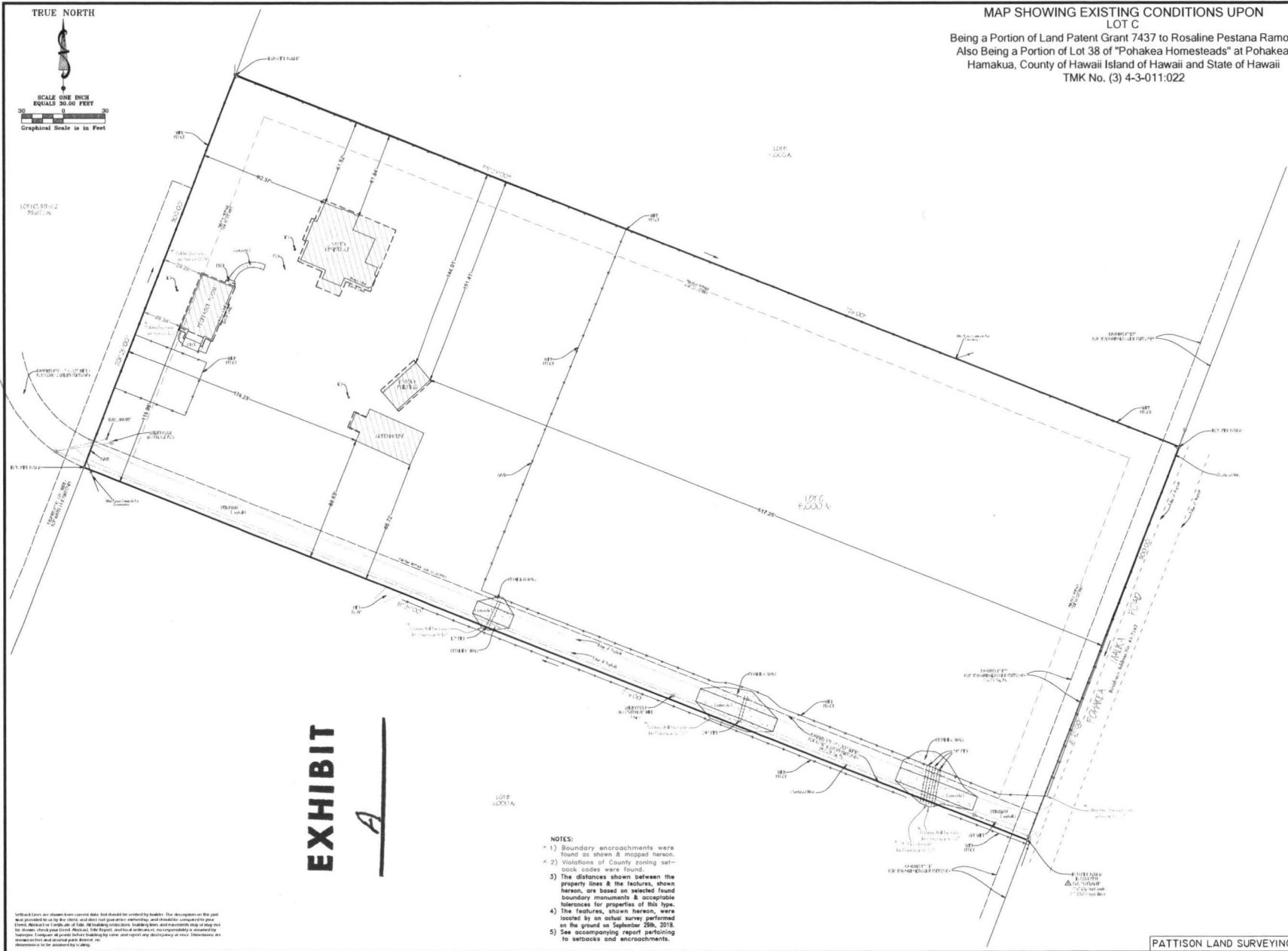
MICHAEL YEE  
Planning Director

LHN

P:\Admin Permits Division\Variances From CoH02\Zone4\VAR17-000409TMK4-2-017-048 Yamachi.doc.rtf5

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

MAP SHOWING EXISTING CONDITIONS UPON  
 LOT C  
 Being a Portion of Land Patent Grant 7437 to Rosaline Pestana Ramos,  
 Also Being a Portion of Lot 38 of "Pohokea Homesteads" at Pohokea,  
 Hamakua, County of Hawaii Island of Hawaii and State of Hawaii  
 TMK No. (3) 4-3-011:022



**EXHIBIT**  
**A**

- NOTES:
- 1) Boundary encroachments were found as shown & mopped hereon.
  - 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 29th, 2018.
  - 5) See accompanying report pertaining to setbacks and encroachments.

Without Limitation of the above, the user of this map shall be responsible for obtaining all necessary permits and approvals from the appropriate agencies and authorities. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate agencies and authorities. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate agencies and authorities.

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.



THOMAS G. PATTISON  
 Hawaii License No. 12742