

William P. Kenoi
Mayor



Duane Kanuha
Director

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County of Hawai'i
PLANNING DEPARTMENT

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July 22, 2014

Mr. Michael Harvey
Affordable Hawai'i Properties LLC
P. O. Box 5884
Hilo, Hawai'i 96720

Dear Mr. Harvey:

SUBJECT: Application: Variance VAR-14-000208
Applicant: MICHAEL HARVEY
**Owners: AFFORDABLE HAWAII PROPERTIES LLC/
ALLAN YOZA**
**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 Northeast Side
Yard Setback)**
TMK: 1-1-010:023, (Lot 978)

The Planning Director certifies the **approval** of VAR-14-000208, subject to conditions. The variance will allow portion of the single-family dwelling to remain on Lot 978, with a minimum 13-foot side (northeast) yard setback. It also allows for the as-built detached water tank to remain with a 9-foot side (northeast) yard setback and associated side yard open space. These exceptions are in lieu of the required minimum 15-foot side yard setback requirement with associated 10-foot side yard open space requirement. This variance is from the subject property's minimum side yard setback and side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 20,000 square feet and is located

in the Mauna Loa Estates Subdivision, situated in the District of Puna, Hawai'i. The subject property's street address is 11-391511th Street.

2. **County Zoning.** Single-Family Residential – 20 square feet (RS-20).
3. **State Land Use Designation.** Urban.
4. **Required Setback.** 25-feet for front and rear; 15-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 27, 2014. The variance site plan map is drawn to scale, and prepared by the applicant, and denotes the position of the existing single-family dwelling and water tank constructed into minimum 15-foot side yard setback. The request affects the northeast side yard setback.

The site plan shows that the as-built, single-family dwelling encroaches 2 feet into the 15-foot side (southeast) yard setback. It also shows that the as-built detached water tank encroaches 6 feet into the 15-foot side (northeast) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#B2006-2388H) was issued on September 15, 2006 to the subject property for a single-family dwelling consisting of a 2 bedroom, 2 bath, living room, kitchen and dining area and garage. An additional building permit (#B2006-2389H) was issued on September 15, 2006 for the construction of a guest house.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated March 6, 2014. (See attached.)
 - b. No comments were received from the Department of Public Works–Building Division.
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 12, 2014 and April 17, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 11, 2014.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated April 2, 2014 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 July 31, 2014.
10. **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.

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 owner/applicant submitted the variance application to address or resolve the encroachment of the as-built, single family dwelling and detached water tank into the 15-foot northeast side yard setback and the 10-foot northeast side yard open space as required by the Zoning Code.

The site plan prepared by the applicant shows that the as-built, single-family dwelling encroaches approximately 3 feet into the 15-foot side (northeast) yard setback. It also shows that the as-built detached water tank encroaches 6 feet into the 15-foot side (northeast) yard setback and 1 foot into the 10-foot side (northeast) yard open space.

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 approximately 8 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit 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.

(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 building encroachments constructed into the affected side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family dwelling and detached water tanks constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would leave large and unattractive reconstruction disfigurement to the.

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Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines.

Another alternative is to consolidate the subject property with the adjoining side properties which is owned by someone else, 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 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 8 years since the single-family dwelling and detached water tank were constructed.

Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling and detached water tank built upon the subject property ("LOT 978") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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This variance application is approved subject to the following variance conditions:

1. The applicant/owner(s), 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. No permit shall be granted to allow an ohana or farm dwelling 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. Should the single-family dwelling and water tank (footprint) 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-14-000208 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:rl

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

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NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
PLANNING DIRECTOR OF HEALTH
COUNTY OF HAWAII


2014 APR 24 PM 2:53

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 21, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000208
Applicant: MICHAEL HARVEY
Owner: AFFORDABLE HAWAII PROPERTIES, LLC/
ALLAN YOZA
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum Yards; (Encroachment into the
Northeast Side Yard Setback)
Tax Map Key: 1-1-010:023; Lot 978

No final inspection on existing septic system. Please have a professional engineer licensed in the State of Hawaii complete a final inspection of the system to confirm it conforms to the rules and regulations of Department of Health, Wastewater Branch, Hawaii Administrative Rules, Chapter 11-62.

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