

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

East Hawaii Office
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
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November 26, 2014

Alan Y. Jyo
17-242 Palaai Street
Kaaau, HI 96749

Dear Mr. Jyo:

SUBJECT: Application: VARIANCE – VAR-14-000212
Applicant: ALAN Y. JYO
Owners: ALAN Y. JYO, AUDREY K. JYO & GLENN M. ITO
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, and Section 25-5-76 Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into the Side (East) Yard Setback)
TMK: 8-8-008:020; Lot 52

The Planning Director certifies the **approval** of VAR 14-000212, subject to conditions. The variance allows for the construction of a two-bedroom single-family dwelling and two-car garage with a minimum 5-foot side (east) yard setback. This allowance is in lieu of the required minimum 10-foot side yard setback. The variance is from the subject property's minimum side (east) yard setback requirement pursuant to the Hawaii County Code, 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.

BACKGROUND AND FINDINGS

- 1. Location.** The subject property consists of approximately 10,783 square feet of land and is located in the Miloli'i, Beach Lots Subdivision, situated at Papa 2nd, South Kona, Hawai'i. The subject property is located along Miloli'i Road.
- 2. County Zoning.** Agricultural - 5 acres (A-5a).
- 3. State Land Use.** Agricultural.
- 4. Setback Requirements:** 20 feet for front and rear; 10 feet sides.

- 5. Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on March 19, 2014. The variance application's site plan map is drawn to scale and prepared by Janel M. Araujo and denotes the placement of the proposed single-family dwelling and two-car garage into the side (east) yard setback.

The site plan shows that the proposed single-family dwelling and two-car garage encroaches 5 feet into the 10-foot side (east) yard setback.

- 6. County Building Records.** None.

7. Agency Comments and Requirements:

- a. The State Department of Health (DOH) memorandum dated July 17, 2014. (See attached)
- b. No comments have been received from Department of Public Works – Building Division.

- 8. Public Notice.** 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 and second notice(s) were mailed on March 19, 2014 and July 7, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 27, 2014.

- 9. Time Extension.** The applicant's original variance application was received on March 19, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until December 5, 2014.

- 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.

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 proposed single-family dwelling and two-car garage into the 10-foot side (cast) yard setback as required by the Zoning Code.

The survey map prepared by Janel M. Araujo shows that the proposed single-family dwelling and two-car garage encroach 5 feet into the side (cast) yard setback.

The variance application would allow the proposed single-family dwelling and two-car garage to be constructed with a minimum 5-foot side yard setback and associated side yard open space.

The narrowness and topography (slope) of the parcel limit the placement of the single-family-dwelling and two-car garage. Approval of this variance allows for the owner to have a safe turning radius for ingress and egress onto the subject property.

Therefore, along with the unusual topography of the subject property, special and unusual circumstances exist on the subject property which would interfere with highest and best use 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 address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Redesign or relocate the proposed single-family dwelling and two-car garage to be constructed upon the subject property to fit within the correct building envelope as prescribed by the Zoning Code. Due to the narrowness and topography of the subject property, finding a more suitable area for the placement of the single-family dwelling and two-car garage is not available.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical; therefore, there are no other reasonable alternatives to resolve these encroachment issues.

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 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.

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.

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.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the two-story single-family dwelling built upon the subject property ("LOT 52") will not meet the minimum side yard setback 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 related to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code's minimum side yard setback.

The approval of this variance allows for the single-family dwelling and two-car garage to be constructed on the subject property, pursuant to the variance application's site plan map.

4. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
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 14-000212 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

Alan Y. Jyo
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NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

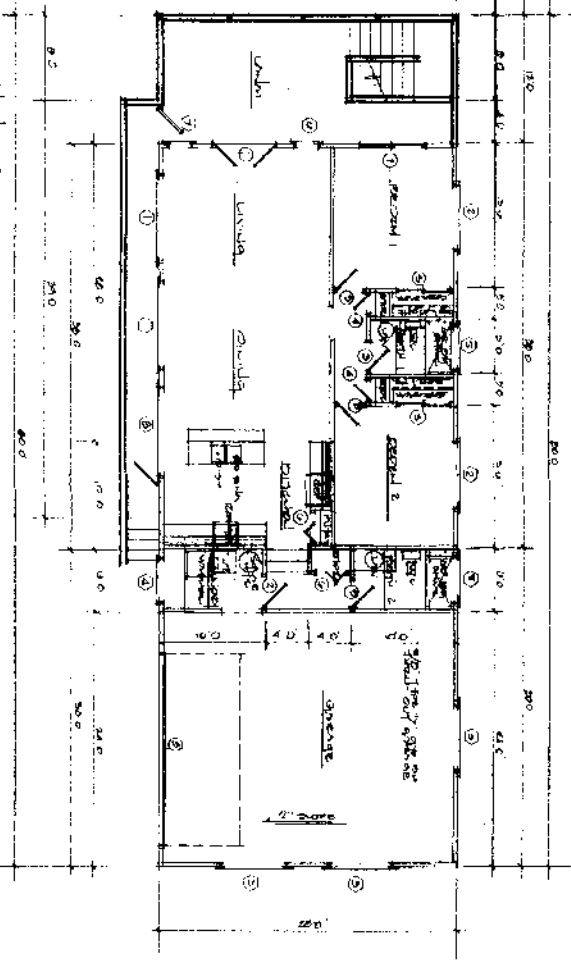
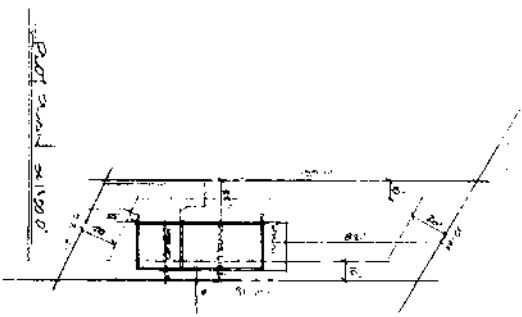
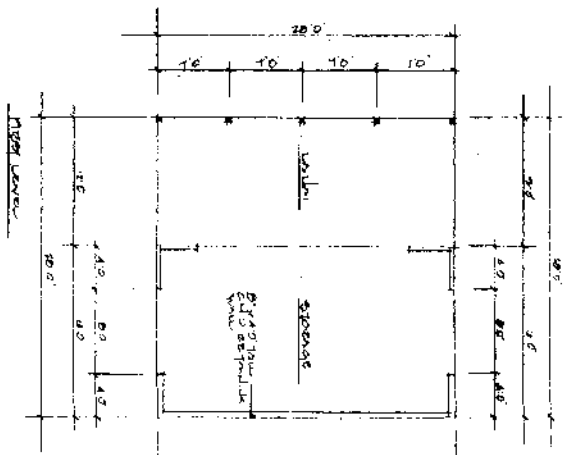
DATE: July 17, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: *NI* Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance- VAR 14-000212
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Open Space Requirements (Encroachment into the Side
(East) Yard Setback
TMK: 8-8-008:020

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.



Room No.	Room Name	Area (sq. ft.)	Volume (cu. ft.)	Notes
1	Living Room	120.0	120.0	
2	Kitchen	80.0	80.0	
3	Bathroom	40.0	40.0	
4	Bedroom	100.0	100.0	
5	Hallway	20.0	20.0	
6	Storage	200.0	200.0	
7	Staircase	10.0	10.0	
8	Entry	20.0	20.0	
9	Room 9	100.0	100.0	
10	Room 10	100.0	100.0	
11	Room 11	100.0	100.0	
12	Room 12	100.0	100.0	
13	Room 13	100.0	100.0	
14	Room 14	100.0	100.0	
15	Room 15	100.0	100.0	
16	Room 16	100.0	100.0	
17	Room 17	100.0	100.0	
18	Room 18	100.0	100.0	
19	Room 19	100.0	100.0	
20	Room 20	100.0	100.0	

Proposed Dwelling Unit
 No. 1 and 2 also known as
 14A/30A and 14B
 14C

