

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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**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

January 13, 2015

Mr. Dennis Hubbard  
P. O. Box 1643  
Kapa'au, Hawai'i 96755

Dear Mr. Hubbard:

**SUBJECT: Application: Variance VAR-14-000245**  
**Applicant: DENNIS ALAN HUBBARD**  
**Owners: DENNIS ALAN AND PAMELA LEE HUBBARD**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards and Article 4, division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into Northwest Rear Yard Setback and West Side Yard Setback)**  
**TMK: 5-3-005:020**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-14-000245, subject to variance conditions. The variance will allow portion of the existing detached pool equipment room/laundry room to remain "as built" with a 5.5-foot to a minimum 8.2-foot rear (northwest) yard setback and the associated roof cave with an 0.1-foot to a minimum 5.9-foot rear (northwest) yard open space. It also allows for the storage shed remaining with a 28.3-foot rear yard setback and a 16.2-foot side (west) yard setback. These exceptions are in lieu of the required 30-foot rear yard setback and 24-foot rear yard open space, and a 20-foot side yard setback as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 3.985 acres of land, is situated at Iole North Kohala, Hawai'i. The subject property's street address is 53-450 Iole Road.
2. **Zoning.** Agricultural – 20 acres (A-20a).

3. **State Land Use.** Agricultural (A).
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 20, 2014, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Roger Fleenor, L.P.L.S denotes the portions pool equipment room, laundry room and storage shed built into the northwest rear yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the "as-built" pool equipment room/laundry room into the 30-foot rear yard setback and the associated roof cave into the 24-foot rear yard open space; along with the storage shed encroaching into the rear and side yard setback, required by the Zoning Code.

The survey map prepared by Roger Fleenor, L.P.L.S. shows that portions of the "as-built" equipment pool room/laundry room encroaches 21.8 feet and 24.5 feet into the 30-foot rear (southwest) yard setback and 29.9 feet into the rear (southwest) yard open space along with the existing storage shed encroaching 1.7 feet into the rear yard setback and 3.8 into the side yard setback.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (995280) was issued on March 16, 1999, for the construction of a 2-bedroom and 2 bath single-family residence.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated October 31, 2014. (See attached memorandum)
  - b. The Department of Public Works–Building Division (Kona) memorandum dated November 14, 2014. (See attached memorandum)
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 and second notice(s) were mailed on November 1, 2014 and December 3, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 12, 2014.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 21, 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 January 15, 2015.

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.

### 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" 3-car garage into the 30-foot rear yard setback and the associated roof eave into the 24-foot rear yard open space as required by the Zoning Code.

The survey map prepared by Roger Fleenor, L.P.L.S. shows that portions of the "as-built" equipment pool room/laundry room encroaches 21.8 feet and 24.5 feet into the 30-foot rear (southwest) yard setback and 29.9 feet into the rear (southwest) yard open space along with the exiting storage shed encroaching 1.7 feet into the rear yard setback and 3.8 into the side yard setback

The owner/applicant has stated in its background report that they were misinformed by the previous owner as to the placement of the boundary pins when they purchased the single-family dwelling and that all additions were based on the original staking and original house plot plan provided by the previous owner.

The owner was unaware of any encroachment when he purchased the property and would not have discovered any problems affecting pool equipment room/laundry room and storage shed until an as-built survey, which was completed on September 17, 2014 by Roger D. Fleenor, LPLS, revealed the encroachments. No evidence has been found to show indifference or premeditation by the builder to intentionally construct portions of the single family dwelling into the property's minimum 30-foot rear (southwest) yard setback and 20-foot side yard setback required by the Zoning Code.

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.

The above special and unusual circumstance determines 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 criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected east side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the pool equipment room/laundry room and storage shed 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 of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the rear and side yard setback, to consolidate the subject 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; therefore, 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's 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 on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

There is a gulch that runs along the rear boundary of the subject property. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light 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 intent and purpose 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 this office did not receive any complaints from surrounding property owners during the roughly 14 years since the single-family dwelling and was 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 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 pool equipment room/laundry room and storage shed built upon the subject property will not meet the minimum rear and side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

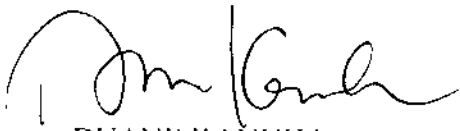
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
4. Should the "as-built" pool equipment room/laundry room and storage shed 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

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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-14-000245 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

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xc: Planning Department (Kona)  
Real Property Tax Division (Kona)  
Gilbert Bailado, Planning GIS

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

NOV 9 2014 3:49 pm  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

MEMORANDUM

DATE: October 31, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance – VAR 14-000245  
Applicant: DENNIS ALAN HUBBARD  
Owner: DENNIS ALAN AND PAMELA LEE HUBBARD  
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,  
Section 25-5-76 Minimum Yards and Article 4, Division 5,  
Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements. (Encroachment into the  
Northwest Rear Yard Setback).  
Tax Map Key: 5-3-005:020

The Health Department found no environmental health concerns with regulatory implications in the submittals.

PLANNING DEPARTMENT  
COUNTY OF HAWAII

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**BUILDING DIVISION – DPW**

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawaii 96720  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

11/14/2014

To: Duane Kanuha

SUBJECT: VAR 14-000245 Hubbard

TMK: 5-3-005:020

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No \_\_\_\_\_ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
  - Building
  - Electrical
  - Plumbing
  - Sign
- Others: Verify use of solar panels, may need to be added to permit.

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720



