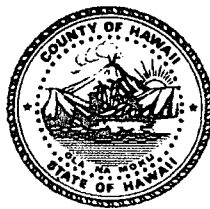


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
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

October 5, 2015

Loren Avedon  
P. O. Box 1684  
Pahoa, Hawaii 96778

Dear Mr. Avedon:

**SUBJECT: Application: Variance VAR-15-000303**  
**Applicant: LOREN AVEDON**  
**Owners: L.R. AVEDON TRUST**  
**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 the Northwest Side**  
**Yard Setback).**  
**TMK: 1-3-026:033 (Lot 33)**

The Planning Director certifies the **approval** of VAR-15-000303 subject to variance conditions. The variance will allow the single dwelling to remain on Lot 33, with 13-foot northwest side yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting in a 10-foot northwest side yard open space. These exceptions are in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space requirement. This variance is from the subject property's minimum (northwest) side yard setback and open space requirement pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, 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 one (1) acre and is located in the Leilani Estates Subdivision, situated in Kea'au, District of Puna, Hawai'i. The subject property's street address is 13-1015 Malama Street.
2. **County Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 4, 2015. The variance site plan is drawn to scale, prepared by the applicant and denotes the position of the single-family dwelling constructed into the minimum 20-foot side yard setback and 14-foot side yard open space. The request affects the northwest side yard setback and associated side yard open space.  
  
The site plan shows that the single-family dwelling encroaches 7 feet into the northwest side yard setback and 4 feet into the northwest side yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#B2008-2362H) was issued on October 27, 2008 to the subject property for 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 August 20, 2015. (See attached.)
  - b. No comments were received from the Department of Public Works – Building.
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 August 10, 2015 and August 31, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 28, 2015.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or 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 single-family dwelling into the 20-foot northwest side yard setback and associated the 14-foot northwest side yard open space as required by the Zoning Code.

The site plan prepared by the applicant shows a section of the single-family dwelling encroaching 7 feet into the 20-foot side (northwest) yard setback and associated roof eave projecting 3 feet into the 14-foot side (northwest) 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 in 2008, nearly 7 years ago, were constructed under valid building permits and other construction permits issued by the County. 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.

***(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 water tank 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 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.

Although the adjoining side property is similarly owned, the applicant has stated that the topography of the adjacent parcel does not make it practical to consolidate the subject property with the adjoining side property. 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.

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 existence of the agricultural shed and open carport.

In addition, 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 built upon the subject property ("LOT 33") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

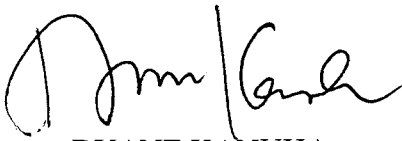
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, 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.

Mr. Loren Avedon  
October 5, 2015  
Page 5

4. Should the single-family dwelling (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-15-000303 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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

Mr. Loren Avedon  
October 5, 2015  
Page 6

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

MEMORANDUM

DATE: August 20, 2015

TO: Mr. Duane Kanuha  
Planning Director, County of Hawaii

FROM: Eric Honda *eh*  
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-15-000303  
Applicant: LOREN AVEDON  
Owner: L.R. AVEDON TRST  
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-76, Minimum Yards, and Section 25-4-44,  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into Side (Northwest) Yard  
Setback and Open Space Requirement)

TMK: 1-3-026:033, Lot 33

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

WORD: VAR-15-000303.ch

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