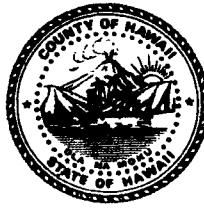


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
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

June 15, 2016

Leslie & Denise Medeiros  
16-2064 Pikake Drive  
Pahoa, Hawai'i 96778

Dear Mr. & Mrs. Medeiros:

**SUBJECT: Application: Variance - VAR-16-000353**  
**Applicant: MANUEL D. MERCADO/LITO'S DRAFTING**  
**Owner: LESLIE H. MEDEIROS AND DENISE K. MEDEIROS**  
**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 the Southwest Rear Yard Setback)**  
**Tax Map Key: 1-6-095:082; Lot 20**

---

The Planning Director certifies the **approval** of Variance 16-000353, subject to conditions. The variance will allow a section of the water tank, seven feet in height, to remain on Lot 20, with a minimum 11.50-foot rear (southwest yard setback in lieu of the required 20-foot rear yard setback and 14-foot rear yard open space requirement. The variance is from the subject property's minimum 15-foot side yard setback. These exceptions are in lieu of the required 20-foot rear yard setback and 14-foot rear yard open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 12,000 square feet and is located in the Ainaloa Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 16-2064 Drive.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** 20-foot front and rear; 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 24, 2015. The variance site plan is drawn to scale, prepared by the Roy G. Hollowell L.P.L.S. (Island boundary), and denotes the position of the water tank, seven feet in height, constructed into the minimum 20-foot rear (southwest) yard setback and rear yard open space requirement. The request affects the southwest yard setback. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the water tank encroaches 8.50 feet into the 20-foot rear (southwest) yard setback and 2.50 feet into the 14-foot rear yard open space requirement.

The encroachment leaves the water tank with a minimum 11.50-foot rear (southwest) yard setback and open space, in lieu of the required 20-foot rear (southwest) yard setback and 14-foot rear yard open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (912070) was issued on October 1, 1991, to the subject property for a single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated March 29, 2016. **(See attached memorandum – Exhibit B)**
  - b. No comments 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 May 12, 2016. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 29, 2016.
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 water tank into the 20-foot southwest rear yard setback.

The survey map shows that portion of the water tank encroaches 8.50 feet into the 20-foot rear (southwest) yard setback and 2.50 feet into the 14-foot rear yard open space requirement.

The encroachment leaves the water tank with a minimum 11.50-foot rear (southwest) yard setback and open space, in lieu of the required 20-foot rear (southwest) yard setback and 14-foot rear yard open space requirement.

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 1991, nearly 25 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 rear yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the water tank denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. 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. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the water tank was in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. 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.

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 water tank has been in existence for approximately 25 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.

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 water tank built upon the subject property ("LOT 20") will not meet the minimum rear 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.

Leslie & Denise Medeiros

Page 5

June 15, 2016

3. Should the water tank 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 proceed to declare subject Variance-16-000353 null and void.

Sincerely,



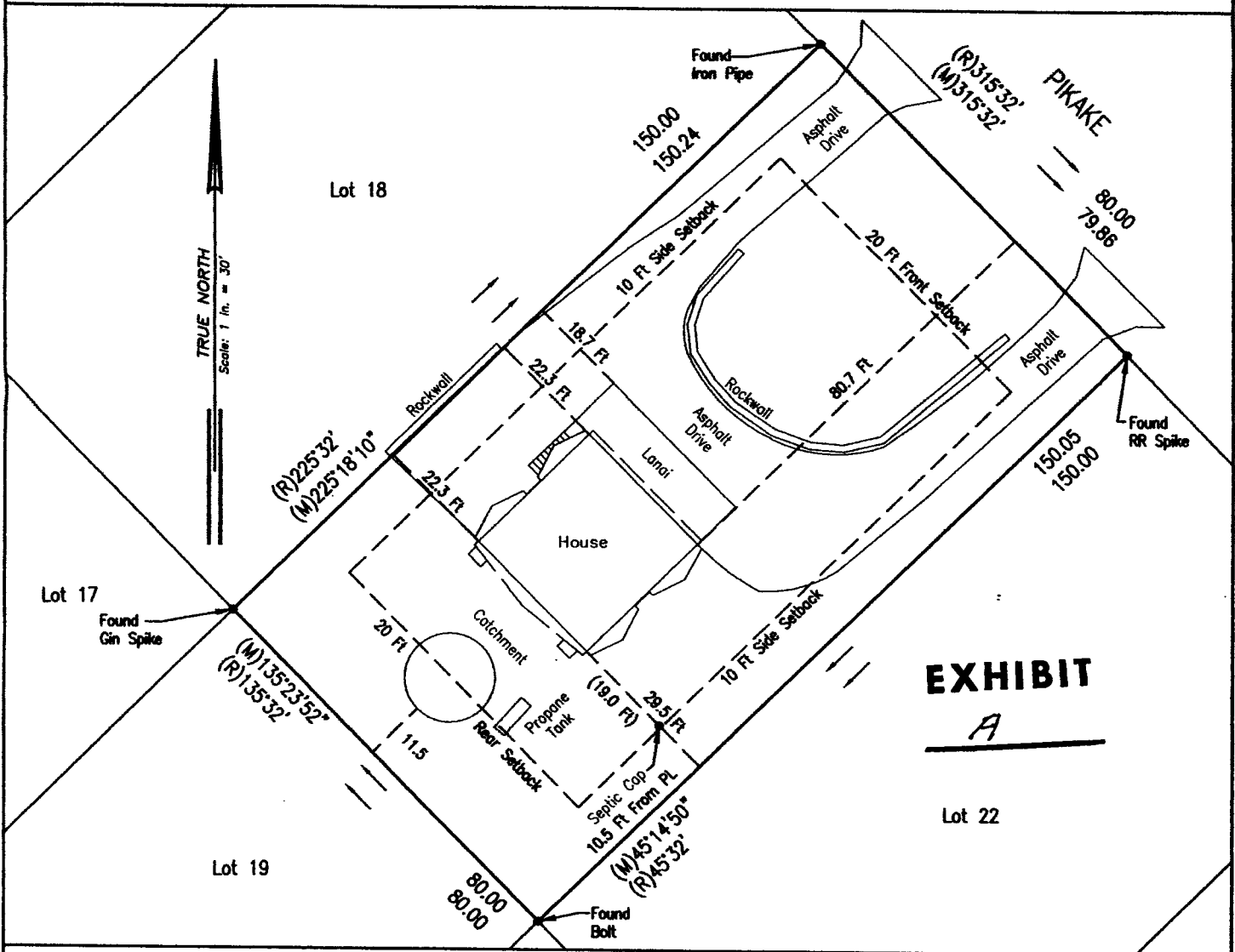
DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR16-000353TMK1-6-095-082 Medeiros.doc

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

**K-2 SURVEY  
LOT 20, BLOCK 53  
LAND COURT APPLICATION 1053, MAP 70  
AINALOA SUBDIVISION  
KEAAU, PUNA, ISLAND OF HAWAII, HAWAII  
TMK: (3rd) 1-6-095: 082**



**EXHIBIT  
A**

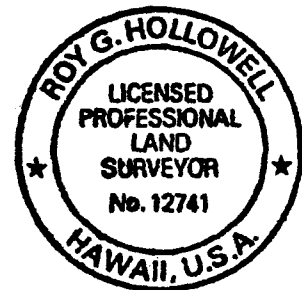
Scale: 1"=30 feet

**Notes**

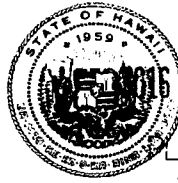
1. Corner markers shown as found were accepted. The measured dimensions (M) are within acceptable tolerances to record dimensions (R) for this type of land and subdivision.
2. Building setback lines per County of Hawaii Planning Department.
3. Water catchment 8.5 feet into rear setback (11.5 feet from property line).
4. Survey performed at the request of Denise Medeiros.

This survey was performed by me or under my direct supervision on April 20, 2013.

*Roy G. Hollowell*  
Roy G. Hollowell  
Licensed Professional Land Surveyor  
Certificate Number 12741  
Expires: April 30, 2014



Island Boundary  
RR 3, Box 81571, Pahoa, HI 96778  
(808) 345-1561  
Evan Wallman - Owner



MAR 30 PM 3 44  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

MEMORANDUM

DATE: March 29, 2016

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

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

SUBJECT: **Application: Variance – VAR 16-000353**  
**Applicant: MANUEL D. MERCADO/LITO'S DRAFTING**  
**Owner: LESLIE H. MEDEIROS & DENISE K. MEDEIROS**  
**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 Southwest  
Rear Yard Setback)**  
**Tax Map Key: 1-6-095:082; Lot 20**

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

**EXHIBIT**

B

