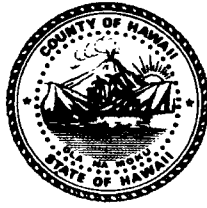


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
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, 2017

TJ Publico  
Drafting & Designs  
P. O. Box 36  
Pepeekeo, HI 96783

Dear Mr. Publico:

**SUBJECT: Application: Variance - VAR 16-000399**  
**Applicant: TJ PUBLICO/DRAFTING & DESIGNS**  
**Owner: MARVIN ARRUDA**  
**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 South Front Yard Setback and North Side Yard Setback)**

**Tax Map Key: 2-5-044:027**

The Planning Director certifies the **approval** of Variance 16-000399, subject to conditions. The variance will allow a portion of the proposed the single-family dwelling to be constructed on the subject property with a minimum 20' south front yard setback, in lieu of the required 30' south front yard setback requirement and associated roof eave projection resulting with a 17' south front yard open space in lieu of the required 24' open space requirement. It also allow for the proposed single-family dwelling to be constructed with a minimum 18'1" north side yard setback in lieu of the required 20' north side yard setback. These exceptions are in lieu of the required 30' front yard and 20' side yard setback and 24' front yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 2.027 acres and is situated at Kukuau 2nd and Kaumana Homesteads, South Hilo, Hawai'i.

2. **County Zoning.** Agricultural – 20 Acres (A-20a).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 30' for front and 20' for sides; Section 25-4-42, Corner building sites: (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 10, 2016. The variance application's site plan map is drawn to scale and prepared by TJ Publico and denotes the placement of the proposed single-family dwelling and two-car carport into the south front and north side yard setback. **(See Exhibit A- Site Plan)**

The site plan shows that a portion of the proposed single-family dwelling encroaches 10' into the 30' south front yard setback and the associated roof eave encroaches 7' into the south front yard open space. It also shows that the proposed single-family dwelling encroaches 1'11" into the 20' north side yard setback.

The encroachment leaves the proposed single-family dwelling with a minimum 20' south front yard setback, in lieu of the required 30' front yard setback and associated roof eave projection resulting with a 17' south front yard open space in lieu of the required 24' open space requirement. It also leaves the proposed single-family dwelling with an 18'1" north side yard setback.

6. **County Building Records.** There no records of any building permits on the subject property.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated January 6, 2017: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments received by 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 the notarized affidavits, the first and second notices were mailed on April 20, 2017 and April 28, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 6, 2017.
9. **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.

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 28, 2016 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 June 15, 2017.

### **GROUND 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 criterion (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the proposed encroachment of the single-family dwelling to be constructed into the 30-foot south front yard setback and 20-foot north side yard setback.

The site plan shows that portion of the proposed single-family dwelling will encroach 10' into the 30' south front yard setback and the associated roof eave will encroach 7' into the front south yard open space. It also shows that the proposed single-family dwelling will encroach 1'11" into the 20' north side yard setback.

The proposed encroachment will leave the proposed single-family dwelling with a minimum 20' south front yard setback, in lieu of the required 30' front yard setback and associated roof eave projection resulting with a 17' south front yard open space in lieu of the required 24' open space requirement. It will also leave the proposed single-family dwelling with an 18'1" north side yard setback.

The subject property is a long narrow trapezoid shaped parcel with dimensions measuring approximately 96.26' at its widest point and a length of approximately 897.89' along the Daniel K. Inouye Highway (see attached site plan for visual reference) which makes it difficult for the owner to comply with current zoning requirements. Further, the subject property is a remainder parcel created as a result of the Saddle Road (Daniel K. Inouye Highway) improvements.

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

Therefore, based on the above-mentioned information along with the unusual shape of the subject property, 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.

### **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 correct and/or address the proposed building encroachments of the single-family dwelling to be constructed into the 30-foot south front yard setback and 20-foot north side yard setback are limited.

One option would be to redesign the single-family dwelling to meet setback requirement which will require the owner to construct a smaller version of the single-family dwelling and would diminish the overall functionality of the proposed single-family dwelling and would deny the owners highest and best use of their property. Another option would be to place the single-family dwelling parallel to the highway, this would make the living area and bedrooms more susceptible to unpleasant traffic noise.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

### **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 for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The encroachment of 10 feet into the south front yard setback and resulting in a 20-foot front yard setback still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

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. 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. 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.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application site plan, the proposed single-family dwelling to be constructed on the subject property will not meet the minimum front 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 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. 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.
4. Should the single-family dwelling 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.
5. The open carport shall not be enclosed and converted for habitable use.
6. All future structural additions to the dwelling shall be in compliance with all zoning code requirements and no other setback variance shall be considered for any development of this property.

Mr. TJ Publico  
Drafting & Designs  
Page 6  
June 15, 2017

7. 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 initiate proceedings to null and void Variance-16-000399.

Sincerely,

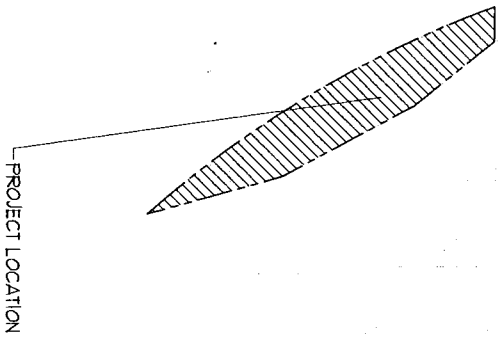
A handwritten signature in black ink, appearing to read "Michael Yee", written in a cursive style.

MICHAEL YEE  
Planning Director

LHN/SG:nci  
P:\Admin Permits Division\Variances From CoH02\Zone2\VAR-16-000399TMK2-5-044-027Arruda.doc.rtf

cc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

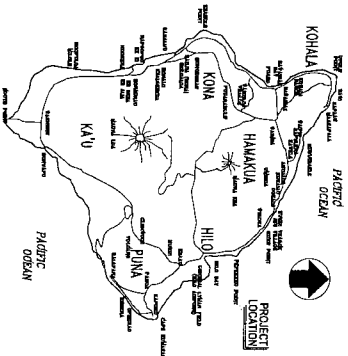
Revised SITE PLAN



VICINITY MAP  
N.T.S.

# EXHIBIT

A



**DRAWING INDEX:**

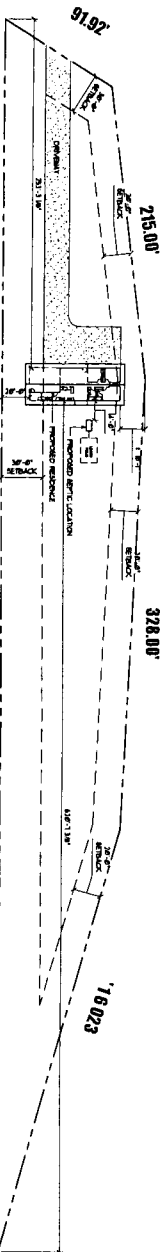
T-1	TITLE SHEET, SITE PLAN, & VICINITY MAP
A-1.0	FLOOR LAYOUT, DOOR & WINDOW SCHEDULE & GENERAL NOTES
A-2.0	EXTERIOR ELEVATIONS
A-3.0	FOUNDATION PLAN, BUILDING SECTIONS & DETAILS
A-4.0	BUILDING SECTIONS, ROOF FRAMING & DETAILS

**AREA OF TABULATIONS:**

LIVING	1,307 SQ. FT.
CARPORT	480 SQ. FT.
<b>TOTAL SQ. FT.</b>	<b>2,121 SQ. FT.</b>

**BUILDING CODE INFORMATION:**

1. FLOOR LIVE LOAD = 40 PSF
2. ROOF LIVE LOAD = 20 PSF
3. BASIC WIND SPEED = 85 MPH
4. WIND EXPOSURE CATEGORY (REF. R3012.14): EXPOSURE "B"
5. SEISMIC DESIGN CATEGORY (REF. FIGURE R3012.1.1): "D2"



SITE PLAN  
SCALE: 1" = 40'-0"

## NEW RESIDENCE FOR: MARVIN ARRUDA

TAX MAP KEY: (3) 2 - 5 - 044 : 027

Drafting & Designs

P.O. BOX 36  
PEPEKEO, HI. 96763  
PH. NO. (808) 848-1983

