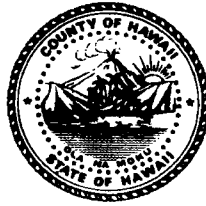


Harry Kim
Mayor



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 5, 2017

Angye Ali
P. O. Box 711764
Mt. View, Hawaii 96771-1764

Dear Ms. Ali:

SUBJECT: Application: Variance - VAR 17-000403
Applicant: ANGYE ALI
Owner: ANGYE ALI
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 Northeast Rear Yard Setback)
Tax Map Key: 1-5-036:031; Lot 243

The Planning Director certifies the **approval** of Variance 17-000403, subject to conditions. The variance will allow the green house and 96-square-foot shed to remain with a minimum 8-foot northeast rear yard setback and a 384-square-foot shed to remain with a 15-foot rear yard setback in lieu of the required 30-foot rear yard setback and the required 24-foot rear open space requirement. It will also allow for the water tank to remain with a minimum 15-foot northeast rear yard setback and 10-foot northwest side yard setback in lieu of the required 20-foot side yard setback and 14-foot side yard open space requirement. These exceptions are in lieu of the required 30-foot rear and 20-foot side yard setback and 24-foot rear yard and 14-foot side 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 one acre and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1337 27th Avenue.
2. **County Zoning.** Agricultural – 1 Acre (A-1a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** Front and Rear – 30 feet; Sides – 20 feet.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on January 5, 2017. The variance site plan is drawn to scale, prepared by the applicant, denotes the position of the agricultural sheds and water tank constructed into the minimum 30-foot rear (northeast) yard setback. The request affects the northeast rear yard setback and the northwest side yard setback. **(See Exhibit A)**

The site plan shows that portion of the greenhouse and 96-square-foot shed encroaches 22 feet into the 30-foot northeast rear yard setback and 16 feet into the 24-foot rear yard open space. It also shows the detached water tank and the 348-square-foot shed encroaches 15 feet into the 30-foot northeast rear yard setback and 9 feet into the 24-foot rear yard open space. The water tank also encroaches 10 feet into the 20-foot northwest side yard setback and 4 feet into the northwest side yard open space.

The encroachment leaves the green house and 96-square-foot shed to remain with a minimum 8-foot northeast rear yard setback and the 348-square-foot shed to remain with a 15-foot rear yard setback in lieu of the required 30-foot rear yard setback and the required 24-foot rear yard open space. It will also allow for the detached water tank to remain with a minimum 15-foot northeast rear yard setback and a 10-foot northwest side yard setback in lieu of the required 20-foot side yard setback and the 14-foot side yard open space.

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 September 26, 2016. “The Health Department found no environmental health concerns with regulatory implications in the submittals.” **(See Exhibit B)**
 - b. Hawai’i County Department of Public Works Building Division memorandum dated March 20, 2017. “Non-Residential structures less than 10’ from the property line must have a 1-hour rated exterior wall. As shown, the 8’ setback would be allowed if the existing structures are modified to provide this fire protection or relocated 10’ from the property line. Note that openings (doors or windows) at the proposed distance cannot exceed 10% of the all area without fire protection or 25% with wire glass or other rated material.” **(See Exhibit C)**
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 January 30, 2017 and February 14, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 2, 2017.

9. Comments from Surrounding Property Owners or Public.

- a. Objection letter from Wade Lonokapu, Camille Lonokapu and Carolee Fernandez received on February 23, 2017. **(See Exhibit D)**
- b. Objection letter received from Billydale Lato dated February 23, 2017. **(See Exhibit E)**

10. Time Extension. The applicant's variance application was acknowledged by letter dated January 18, 2017 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 5, 2017.

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 96-square-foot and 348-square-foot agricultural sheds along with the green house into the 30-foot northeast rear yard setback and rear yard open space requirement and the water tank into the 30-foot rear yard setback and 20-foot side yard setback.

The site plan shows that portion of the greenhouse and 96-square-foot shed encroaches 22 feet into the 30-foot northeast rear yard setback and 16 feet into the 24-foot rear yard open space. It also shows the detached water tank and the 348-square-foot shed encroaches 15 feet into the 30-foot northeast rear yard setback and 9 feet into the 24-foot rear yard open space. The water tank also encroaches 10 feet into the 20-foot northwest side yard setback and 4 feet into the northwest side yard open space.

The encroachment leaves the green house and 96 square feet square feet shed to remain with a minimum 8-foot northeast rear yard setback and the 348-square-foot shed to remain with a 15-foot rear yard setback in lieu of the required 30-foot rear yard setback and the required 24-foot rear yard open space. It will also allow for the detached water tank to remain with a minimum 15-foot northeast rear yard setback and a 10-foot northwest side yard setback in lieu of the required 20-foot side yard setback and the 14-foot side 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.

The applicant had hired professional licensed contractors for the construction and placement of the agricultural sheds and water tank, and was informed that due to the size of the improvements, building permits was not required. Based on that information, the applicant was under the impression that the improvements were in compliance with all county codes.

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 relocate the agricultural sheds, greenhouse and water tank denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. Requiring the owner to relocate the agriculture sheds, greenhouse and water tank to meet rear and side yard setback requirements would involve the owner to remove income producing guava trees and would result in the loss of income. This alternative would be deemed unreasonable, especially when the owner relied on professional licensed contractors for placement of the sheds and water tank, and that building permits were not required, and was under the impression that the agricultural sheds, greenhouse and water tank were in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and re-subdivide 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'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 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.

Two letters of objection were received expressing concerns to the approval of the variance application.

The objection from Wade Lonokapu, Camille Lonokapu and Carolee Fernandez cites:

"We are in opposition of the variance regarding the above TMK. Proper setbacks have not been established. This structure is not built to building code. This property lacks septic sewage system for residential use."

With respect to the setback issues, the applicant relied on the licensed contractors she hired for the construction and placement of the agricultural sheds and water. With reference to the sheds and water tank not built to code, is an issue that should be dealt by the Department of Public Works - Building Division. The subject property is not being used for residential purposes. The determination of whether a cesspool or septic sewage system is required for the subject site is the responsibility with the State of Hawaii Department of Health.

The Department of Health, in response to comments requested by the Planning Department, stated, *"The Health Department found no environmental health concerns with regulatory implications to the submittals."*

The setback encroachment issues are located at the rear of the subject property, the Lonokapu's and Fernandez's property (TMK: 1-5-036:060) is located across the street from the subject property on 27th Avenue.

The second objection letter, received from Billydale Lato, states in part that his first concern is with the structure being built without building permits and placed within the setbacks. He has stated, *"This placement causes problems when it is necessary for me to load up my work tools and equipment early in the morning or late at night for work."*

The second concern Mr. Lato cites is for health and safety. His concern is with regards to a composting toilet being used in lieu of a cesspool or septic system and how the waste from the composting toilet is disposed of.

Mr. Lato's property abuts the subject property along the northwest side yard boundary, the water tank is the only structure that encroaches into the side yard setback and side yard open space. All other structures complies with the 20-foot side yard setback and 14-foot side yard open space requirement.

The applicant was unaware of any zoning violation and relied on the licensed contractor for the construction and placement of the improvements. The applicant has stated that she was informed by the contractor that building permits were not required and that the sheds, water tank and greenhouse were in compliance with all county codes. As mentioned earlier, any health issues should be referred to the Department of Health.

The variance addresses only the setback violation, any other concerns regarding building permits and health issues should be referred to the appropriate government agencies as cited above. Building Permits will be required and subject to Department of Health review and compliance. This variance is the first step in bringing the subject property into compliance with Building Division and Department of Health requirements.

It should also be noted that the owner of the adjacent rear property did not file an objection to the variance application.

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. 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 site plan, the agriculture sheds, greenhouse and water tank built upon the subject property ("LOT 243") will not meet the minimum rear and side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

1. 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.
2. An Ohana or additional farm dwelling shall not be granted 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.

Angye Ali
Page 7
June 5, 2017

3. Should the agricultural sheds, greenhouse and water tank 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. The agricultural sheds shall not be converted for habitable use and shall remain for agricultural use only.
5. Future or new building improvements and permitted uses shall be subject to applicable State law and County ordinances and regulations pertaining to land use, 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-17-000403 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR17-000403TMK1-5-036-031 Ali.doc

Encl: Exhibits A-E

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)
Department of Public Works-Building Division

Wade & Camille Lonokapu
Carolee Fernandez
Billydale Lato

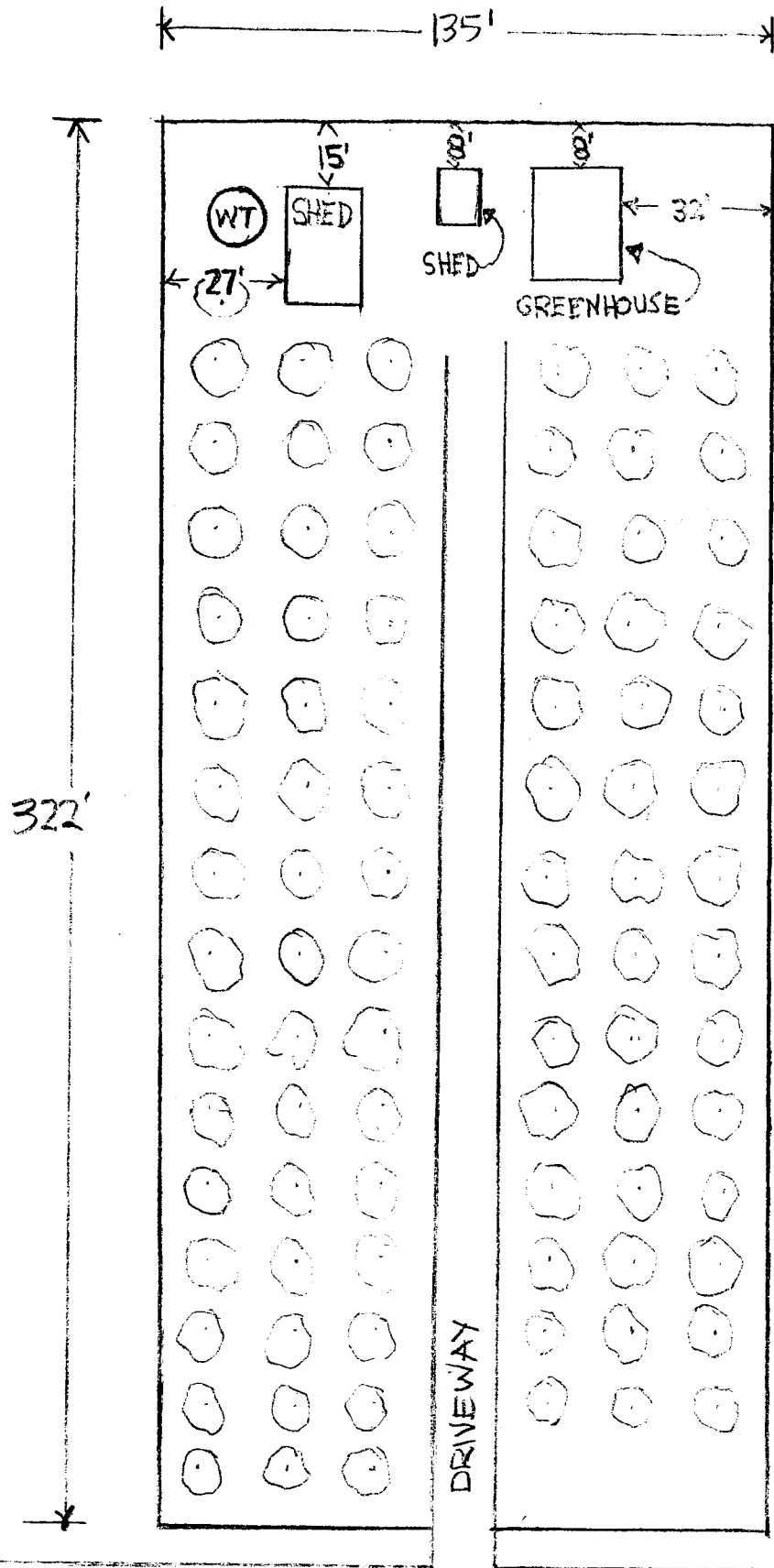


EXHIBIT
A

← 27th Ave. →

SCALE: 1" = 40'

15-1337 27th Ave, TMK 3-1-5-36-31

⊙ = GUAVA TREE

PLOT PLAN

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: January 27, 2017

TO: Mr. Michael Yee
Planning Director, County of Hawaii

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

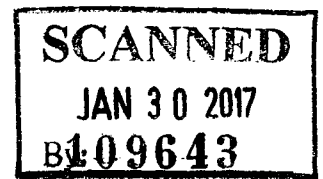
SUBJECT: Application: Variance VAR-17-000403
Applicant: ANGYE ALI
Owner: ANGYE ALI
Request: Variance From Chapter 25, Zoning Article 5, Division 7
Section 25-5-76 and Section 25-4-44
TMK: 1-5-036:031, Lot 243

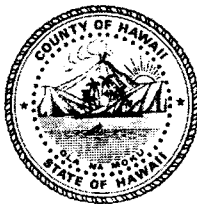
2017 JAN 30 AM 9 58
PLANNING
COUNTY OF HAWAII

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

EXHIBIT

B





BUILDING DIVISION – DPW

COUNTY OF HAWAII – 74-5044 Ane Keohokalole HWY. BLDG E 1st Floor KAILUA-KONA, HI 96740
Hilo Office (808) 961-8331 * Fax (808) 961-8410 Kona Office (808) 323-4720 * Fax (808) 327-3509

2017 MAR 20 PM 11 43
PLANNING DEPARTMENT
COUNTY OF HAWAII

Date of Notice: March 20, 2017
Owner: Angye Ali
Mailing address: c/o County of Hawaii Planning Department

Address location of property: na

SUBJECT: VAR 17-000403
T.M.K.: 1-5-036: 031

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 violation(s) still outstanding:
 - Building Electrical Plumbing Sign
- Others: Fences & Accessory Structures, Projections into Building Setbacks

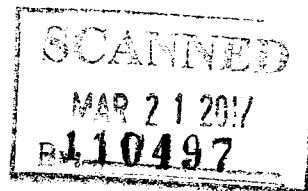
Non-Residential structures less than 10' from the property line must have a 1-hour rated exterior wall. As shown, the 8' setback would be allowed if the existing structures are modified to provide this fire protection or relocated to 10' from the property line. Note that openings (doors or windows) at the proposed distance cannot exceed 10% of the wall area without fire protection or 25% with wire glass or other rated material.

Should you have any questions regarding matters contained herein, please feel free to contact us.

EXHIBIT

C

Neil Erickson, Plans Examining Manager
County of Hawaii Department of Public Works Building Division



2017 FEB 23 pm 2 45

PLANNING DEPARTMENT
COUNTY OF HAWAII

To: County of Hawaii Planning Department
Michael Yee, Planning Director

From: Wade & Camille Lonokapu, Carolee Fernandez

Re: VAR-17-000403 Angye Ali

TMK-150 36 031

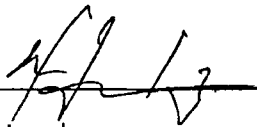
Aloha,

We are in opposition of the variance regarding the above TMK.

Proper setbacks have not been established.


This structure is not built to code. The property lacks septic sewage system for residential use.

Mahalo,




Wade Lonokapu

2.23.2017
Date



Camille Lonokapu

2.23.17
Date



Carolee Fernandez

2-22-17
Date

EXHIBIT
D

110057

2017 FEB 23 PM 2 45

PLANNING DEPARTMENT
COUNTY OF HAWAII

February 22, 2017

Michael Yee, Planning Director
Hawaii County Planning Department
101 Pauahi Street, Suite 3
Hilo, HI 96720

Re: Variance Application (VAR-17-000403) Angye Ali / TMK 1-5-036:031

Dear Mr. Yee,

I am submitting this letter to voice my opposition to a Variance Application submitted by Angye Ali whose property directly adjoins my southern property boundary.

My first concern is with the structure itself. It has been erected without a Building Permit and placed within the setbacks, placing the structure nearest to my storage shed. This placement causes problems when it is necessary for me to load up my work tools and equipment early in the morning or late at night for work. The noise created will cause her to come out and harass me and my workers verbally and by taking video and calling the police. I erected this storage shed long ago and yet she still chose to erect her residence within 15 feet of it. I built this at the back of my property to ensure that I minimize any inconvenience caused to my neighbors by the noise that may be made. Another issue with the structure is that it is not connected to the electricity grid and the occupant will run her generator at all hours of the night for long periods of time creating an environment difficult to sleep in.

My second concern is for health and safety. It is my understanding that the structure does not have a septic tank (permitted or otherwise). Where does any waste water go? It is also my understanding that a composting toilet is being used and that the resulting composted product is being used to fertilize the plants on the property. Is this legal and if it is, how do I ensure that the waste has gone through all the processes needed to make compost safe to use as fertilizer? This is a huge concern to me and my wife, not only because of possible (although unlikely) contamination of our island's aquifer but because when we sit down at night on the lanai outside, we watch rats and mice come from Ms. Ali's property, try to get into our trash and walk all over my property then return to hers when done. My dogs, children and grandchildren play on my property and we worry about, and try to prevent, the usual diseases that are spread by rodents but now we have to worry about the other things that can possibly be transmitted because the rodents are nesting on her property and walking in the compost generated from the composting toilet.

Although my grievances with my neighbor are many, I have limited this letter to concerns directly related to this Application. I can be reached at (808) 960-4427 if you have any questions. Thank you for your time.

Regards,

B Lato

Billydale Lato
Property Owner, TMK 1-5-036:030

EXHIBIT

E

FEB 24 2017
110058