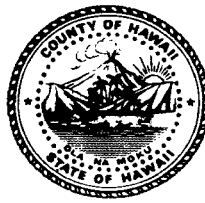


Harry Kim  
Mayor

Wil Okabe  
Managing 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

Michael Yee  
Director

Duane Kanuha  
Deputy Director

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

September 6, 2019

Anton Vasilescu  
326 Whitecap Lane  
Newport Beach, CA 92657

Dear Mr. Vasilescu:

**SUBJECT: Application: Variance - VAR 19-000525**  
**Applicant: ANTON VASILESCU**  
**Owner: ANTON VASILESCU**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into East Rear Yard Setback)**  
**Tax Map Key: (3) 1-1-007:032 (Lot 320)**

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After reviewing your variance application, the Planning Director certifies the **denial** of VAR-19-000525. The variance application seeks to allow for the partially built 200 sq. ft. playhouse to be constructed within the east rear yard setback with a minimum 19 feet – 4 inches rear (east) yard setback and to be constructed within the north side yard setback with a minimum 13 feet - 6 inches side (north) yard setback. The variance is from Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards.

The Planning Director has concluded that the variance from the above-referenced zoning standards be **denied** based on the following findings:

**BACKGROUND**

1. Location. The subject property contains approximately 20,000 square feet (0.4591 acre) and is located in the Mauna Loa Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property is located on Third Street.

2. Zoning. Single-Family Residential – 20,000 sq. ft. (RS-20).
3. State Land Use. Urban (U).
4. Required Setback. 25-feet front and rear; 15-feet for sides.
5. Variance Application. The applicant submitted the variance application, attachments, and filing fee on June 3, 2019, 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 the applicant which shows the partially built playhouse encroaches 5 feet – 8 inches into the east rear yard setback and 1 foot – 6 inches into the north side yard setback. The partially built 200 sq. ft. playhouse to be constructed within the east rear yard setback with a minimum 19 feet – 4 inches rear (east) yard setback and to be constructed within the north side yard setback with a minimum 13 feet - 6 inches side (north) yard setback with a minimum 19 foot – 4 inches rear (east) yard setback and 13 feet – 6 inches side (north) yard setback. **(See attached site plan – Exhibit A and Photos - Exhibit B & C)**

6. County Building Records. Real Property Tax Office records indicate that no building permit has been issued for subject property.
7. Agency Comments and Requirements.
  - a. No comments received from the State Department of Health (DOH)
  - b. Department of Public Works - Building Division memorandum dated July 8, 2019, states; No Building permit was issued for work done on the property. (Exhibit D)
8. Notice to Surrounding Property Owners. A copy of the first and second notices were sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to the submittals, the first and second notices were mailed on May 8, 2019, and June 28, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on June 25, 2019.
9. Comments from Surrounding Property Owners or Public.
  - a. Objection letter received from Gail Lagerstrom on July 2, 2019. (See Exhibit E)
  - b. Objection letter received from Elaine Oleyte on July 3, 2019. (See Exhibit F)

**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 right 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 does not meet with criteria (a) for the following reasons:

There are no special or unusual circumstances applying to the 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 that property.

The owner/applicant submitted the variance application to address or resolve the encroachment of the partially built 200 sq. ft. playhouse into the 25-foot east rear yard setback and 15-foot side yard setback as required by the Zoning Code.

The variance application's site plan map is drawn to scale and prepared by the applicant which shows that the partially built 200 sq. ft. playhouse encroaches 5 feet – 8 inches into the east rear yard setback and 1 foot – 6 inches into the north side yard setback.

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance. There is ample room on the subject 20,000 sq. ft. property for placement of the 200 sq. ft. playhouse and still comply with the setback requirements.

Therefore, we feel that there is no physical or dimensional constraints on the property that would preclude the proper siting of the playhouse in full compliance with applicable zoning code requirements.

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance since there is a reasonable alternative for the applicant to resolve the encroachment issues.

***(b) There are no other reasonable alternatives that would resolve the difficulty.***

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

Since the Variance application is denied, there are no reasonable alternatives except for the redesign, or relocation of the proposed storage shed to fit within the correct building envelope denoted on the recent site map as prescribed by the Zoning Code.

As discussed above, the subject property is 20,000 sq. ft. in size and the applicant has not demonstrated as to why there are no other reasonable alternatives to re-site the proposed storage shed on the subject property in compliance with applicable zoning requirements.

***(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 does not meet with criteria (c) for the following reasons:

In order to grant a waiver from the minimum setback requirements of the zoning code, the variance application must show conclusively that it meets with all three criteria required in granting of a variance. The overall impact of granting a variance must also be considered in terms of how this may affect the entire neighborhood.

Objections to the variance was received from Gail Lagerstrom and Elaine Oleyte

Therefore, after reviewing the variance application, county records and other documentations, the Planning Director finds that the partially built playhouse constructed into the east rear and north side yard setback was self-imposed. Based on the background information and other materials referenced in the variance analysis, the variance to allow for the encroachment would not be consistent with the general purpose of the zoning district and the intents and purpose of the Zoning code, Subdivision code and the County General Plan.

**VARIANCE DECISION**

The variance application, VAR-19-000525, concerning the applicant's request, seeks to allow for the construction of a 200 sq. ft. playhouse to be constructed within the east rear yard setback with a minimum 19 feet – 4 inches rear (east) yard setback and 13 feet – 6 inches side (north)

---

side yard setback in lieu of the required 25-foot rear yard setback and the 15-foot side yard open space requirement is hereby **DENIED**.

1. All structures shall conform to be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
  - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
  - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Mr. Anton Vasilescu  
September 6, 2019  
Page 6

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



MICHAEL YEE  
Planning Director

LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR19-000525 TMK 110070320000 Vasilescu.doc

Encl.: Exhibits A to F  
General Petition for Appeal of Decisions by Planning Director form

Cc: Gilbert Bailado, Planning GIS (via email)

**EXHIBIT**

A

ATTACHMENT "B"

PROJECT  
**THIRD &  
JADE  
RESIDENCE**

VOLCANO, HAWAII  
TMK (3) 1-1-007-032

DATE: 05/25/2019

REVISION	DATE
1	
2	
3	
4	
5	
6	

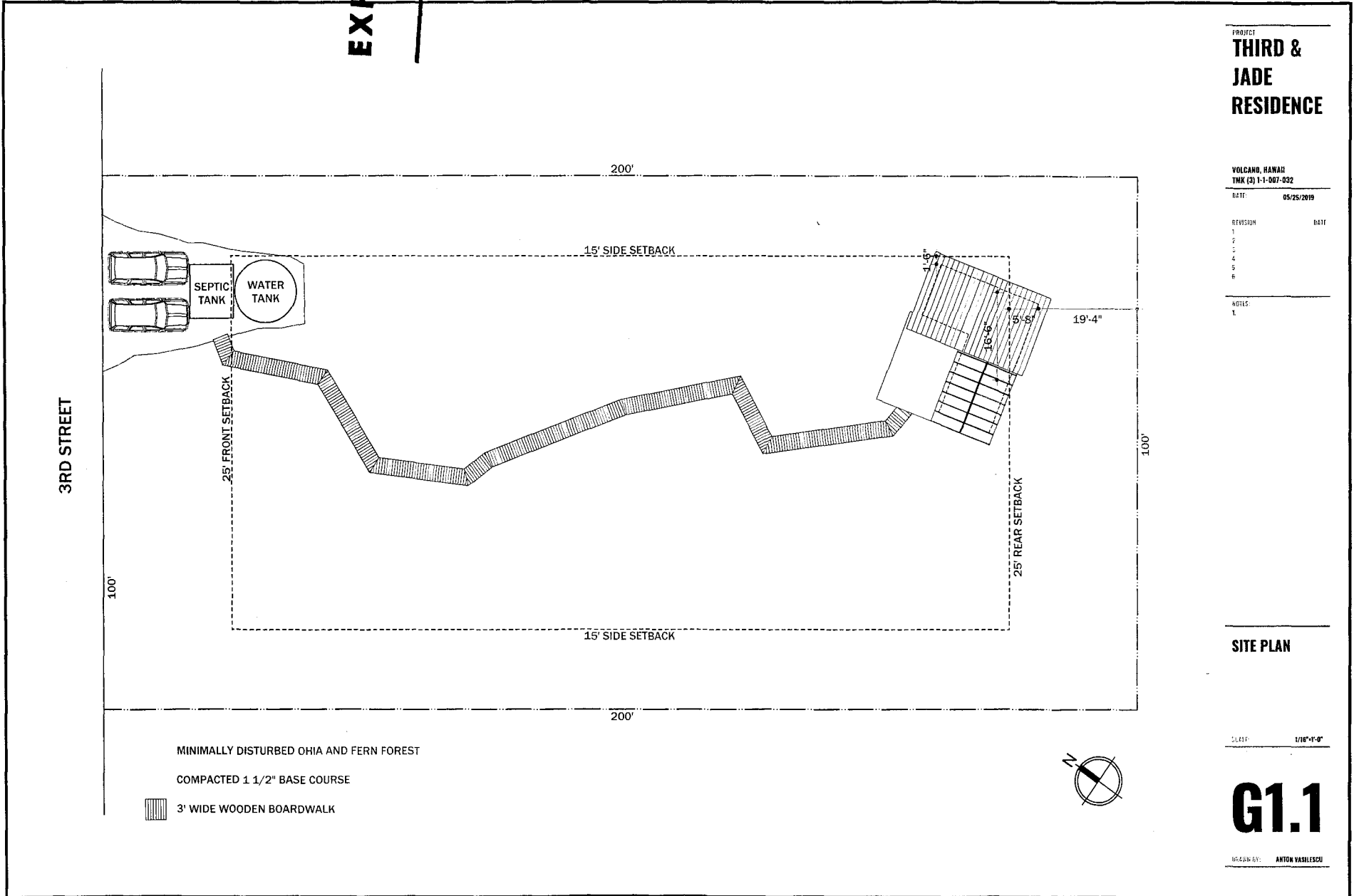
NOTES:  
1.

**SITE PLAN**

SCALE: 1/16"=1'-0"

**G1.1**

DESIGNED BY: ANTON VASILESCU



3RD STREET

100'

200'

15' SIDE SETBACK

SEPTIC TANK

WATER TANK

25' FRONT SETBACK

15' SIDE SETBACK

100'

19'-4"

25' REAR SETBACK

200'

MINIMALLY DISTURBED OHIA AND FERN FOREST

COMPACTED 1 1/2" BASE COURSE

3' WIDE WOODEN BOARDWALK



## BUILDING LOCATION AND SIZE

## EXHIBIT

Original clearing after ginger and climbing ferns were removed.  
View towards the Eastern corner of the property.

B



Building size is 10 ft x 20 ft.  
View towards the Eastern corner of the property.

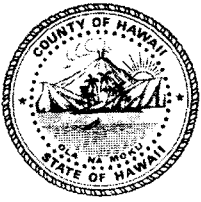




Overall, the building is nestled in the existing clearing.  
View towards the Eastern corner of the property.

**EXHIBIT**  
C





# BUILDING DIVISION – DPW

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

Date of Notice: July 8, 2019  
Owner: Anton Vailescu  
Mailing address: c/o Anton Vailescu

**EXHIBIT**

D

Address location of property:

SUBJECT: Setback Variance  
T.M.K.: 1-1-007: 032

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

- No Building 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
- No Objections

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

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

2019 JUL 9 AM 7 39  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

**SCANNED**

BJJL01 1 2019

126466

VAR-15 000525

**Nakayama, Larry**

**From:** Gail Lagerstrom <gail2457@icloud.com>  
**Sent:** Tuesday, July 02, 2019 10:08 AM  
**To:** Nakayama, Larry  
**Subject:** Pending variance

2019 JUL 2 AM 11:59

PLANNING DEPARTMENT  
COUNTY OF HAWAII

Dear Larry,

My name is Gail Lagerstrom and I am contesting a variance that is trying to be obtained by Anton Vasilescu. Parcel# (3)1-1-007-032. The dwelling he's building would be encroaching into East Rear Yard setback of my family's property. I would appreciate it if this is not allow to happen as per the wishes of myself and my family. If need anything further from me you can contact me at this email address or at 702-321-7694. Thank you for your consideration.

Sent from my iPhone

**EXHIBIT**

E

SCANNED  
JUL 03 2019  
126336

July 3 2019

2019 JUL 3 AM 11 36  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

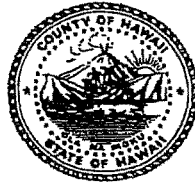
Dear Mr. Anton Vasilasou and  
Planning Director

In regards for variance request for residential dwelling is not agreeable. I am against this request because it will enable other future home buyers to do the same. I feel this is unfair and I have been living on my property for 10 years.

Thank you  
Elaine Olyte

**EXHIBIT**  
7

SCANNED  
JUL 08 2019  
126391



## County of Hawai'i

### BOARD OF APPEALS

Aupuni Center • 101 Pauahi, Suite 3 • Hilo, Hawai'i 96720  
(808) 961-8288 • Fax (808) 961-8742

## GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

(Type or legibly print the requested information. See instructions attached.)

TYPE OF PETITION:

- Appeal of Planning Director's Decision  
 Appeal of Public Works Director's Decision

APPELLANT: \_\_\_\_\_

APPELLANT'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ (EMAIL): \_\_\_\_\_

APPELLANT'S INTEREST IN THE PROPERTY: \_\_\_\_\_  
\_\_\_\_\_

APPELLANT'S NATURE OF APPEAL AND REQUEST: \_\_\_\_\_  
\_\_\_\_\_

LAND OWNER: \_\_\_\_\_

TAX MAP KEY:(land in question) \_\_\_\_\_ AREA OF PROPERTY: \_\_\_\_\_

STATE LAND USE DESIGNATION: \_\_\_\_\_ COUNTY ZONING: \_\_\_\_\_

STREET ADDRESS OF PROPERTY: \_\_\_\_\_

APPELLANT'S REPRESENTATIVE: \_\_\_\_\_ TITLE: \_\_\_\_\_

REPRESENTATIVE'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

REPRESENTATIVE'S ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ (EMAIL): \_\_\_\_\_

■ See instructions attached.

## INSTRUCTIONS

### GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

Board of Appeals Rules of Practice and Procedure (RPP) can be reviewed in the Planning Department or on the following website: <http://www.cohplanningdept.com/boards-and-committees/>

1. This petition must be accompanied by a filing fee of two hundred fifty dollars (\$250) payable to the County Director of Finance [RPP Section 8-7], and:
2. The original and ten (10) copies of this completed petition with the following:
  - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
  - b. A statement explaining the nature of the appeal and the relief requested.
  - c. A statement explaining:
    - (i) How the decision appealed from violates the law; or
    - (ii) How the decision appealed from is clearly erroneous; or
    - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
  - d. A clear and concise statement of any other relevant facts.
3. Proof of Service by the Appellant to the Director and all landowners of the affected property, as reflected in County Real Property Tax Division records, if owners are not the Appellants [RPP Section 8-8].
4. A list of the names, address and tax map keys of all owners of property within three hundred feet (300') of the perimeter boundary of the affected property. [RPP Section 8-11(d)]  
If the decision being appealed was made under the Hawai'i County Code (HCC) Zoning Chapter 25 and the affected property is within the state land use agricultural district, Appellant must provide a list of names, address and tax map keys for all owners of property within five hundred feet (500') of the perimeter boundary of the affected property. [HCC Section 25-2-4]

Completed petitions should be remitted to the Board of Appeals, 101 Pauahi Street, Suite 3, Hilo, HI 96720. For questions, please call 808-961-8288 or email [planning@hawaiicounty.gov](mailto:planning@hawaiicounty.gov).