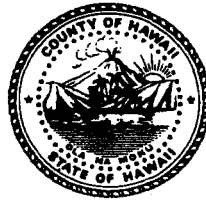


Harry Kim  
Mayor

Roy Takemoto  
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

January 15, 2020

K. Nalani Hance  
67-1185 Māmalahoa Hwy., Suite E-128  
Kamuela, HI 96743

Dear Ms. Hance:

**SUBJECT: Application: Variance - VAR 19-000552**  
**Applicant: K. NALANI HANCE**  
**Owner: ANTHONY F. AND PATRICIA M. CRUZ**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Northeast Rear Yard Setback)**  
**Tax Map Key: (3) 1-5-053:144**

The Planning Director certifies the **denial** of Variance 19-000552. The variance seeks to allow for the "as-built" galvanized water tank to remain with a minimum 10.7 foot rear (northeast) yard setback and side yard open space in lieu of the required 30-foot rear yard setback and the 24-foot rear yard open space. These exceptions are in lieu of the required 30-foot rear yard setback 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.

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 one (1) acre (43,560 sq. ft.) and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property is located at 15-1501 5<sup>th</sup> Avenue.
2. Zoning. Agricultural – 1 acre (A-1a).
3. State Land Use. Agricultural (A).

4. Required Setback. 30-feet front and rear; 20-feet for sides.
5. Variance Application. The applicant submitted the variance application, attachments, and filing fee on October 9, 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 Roger D. Fleenor, LPLS which shows the galvanized steel water tank encroaches 19.3 feet into the northeast rear yard setback. (See attached site plan – Exhibit A)

6. County Building Records. Real Property Tax Office records indicate that building permit (911651) issued on August 1, 1991, for the construction of a 3-bedroom and 2-bath, single-family dwelling, two (2) car carport and doughboy water tank.
7. Agency Comments and Requirement.
  - a. State Department of Health (DOH) memorandum dated November 22, 2019: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. Department of Public Works, Building Division (DPW) memorandum dated October 29, 2019. "No Objections."
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 October 9, 2019, and November 7, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on October 24, 2019.
9. Comments from Surrounding Property Owners or Public. No further written agency comments were received. 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 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 “as-built” galvanized water tank into the 30-foot northeast rear yard setback.

The variance application’s site plan map is drawn to scale and shows that the “as-built” galvanized water tank encroaches 19.3 feet into the northeast rear yard setback and 4.3 feet into the 24 feet rear yard open space.

The encroachment leaves a portion of the “as-built” galvanized water tank with a minimum 10.7-foot northeast rear yard setback, in lieu of the required 30-foot rear yard setback and 24-foot rear yard open space requirement.

According to the Department of Public Works–Building Division and Hawai‘i County Real Property Tax Department, records indicate that a building permit (911651) was issued for the construction of a 3-bedroom and 2-bath, single-family dwelling, two (2) car carport and doughboy water tank. Subsequently, the doughboy water tank was replaced with a galvanized water tank without a building permit being issued.

Had the owner applied for the proper building permit process for the replacement of the water tank, they would have been informed of the minimum yard setback requirements required by the zoning code.

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. Although a large amount of the front area is unusable, there is enough area to the south side of the single-family dwelling to relocate the “as-built” water tank and still comply with the setback requirements.

There are no physical or dimensional constraints on the property that would preclude the proper siting of the galvanized water tank in full compliance with applicable zoning code requirements.

***(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 northeast 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 removal of the building encroachments, redesign, or relocation of the as-built galvanized water tank area constructed upon the subject property 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 one acre in size and the applicant has not demonstrated as to why there are no other reasonable alternatives to re-site this unpermitted improvement on the subject property to be 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.

Therefore, after reviewing the variance application, county records and other documentations, the Planning Director finds that the "as-built" galvanized water tank constructed into the northeast rear 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-19-000552, concerning the applicant's request, seeks to allow for the "as-built" galvanized water tank constructed within the rear (northeast) yard setback with a minimum 10.7 feet rear (northeast) yard setback in lieu of the required 30-foot rear yard setback 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.

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

We apologize for the delay in issuing this denial. The timing of this application was impacted by implementation of the Short-Term Vacation Rental process.

Sincerely,



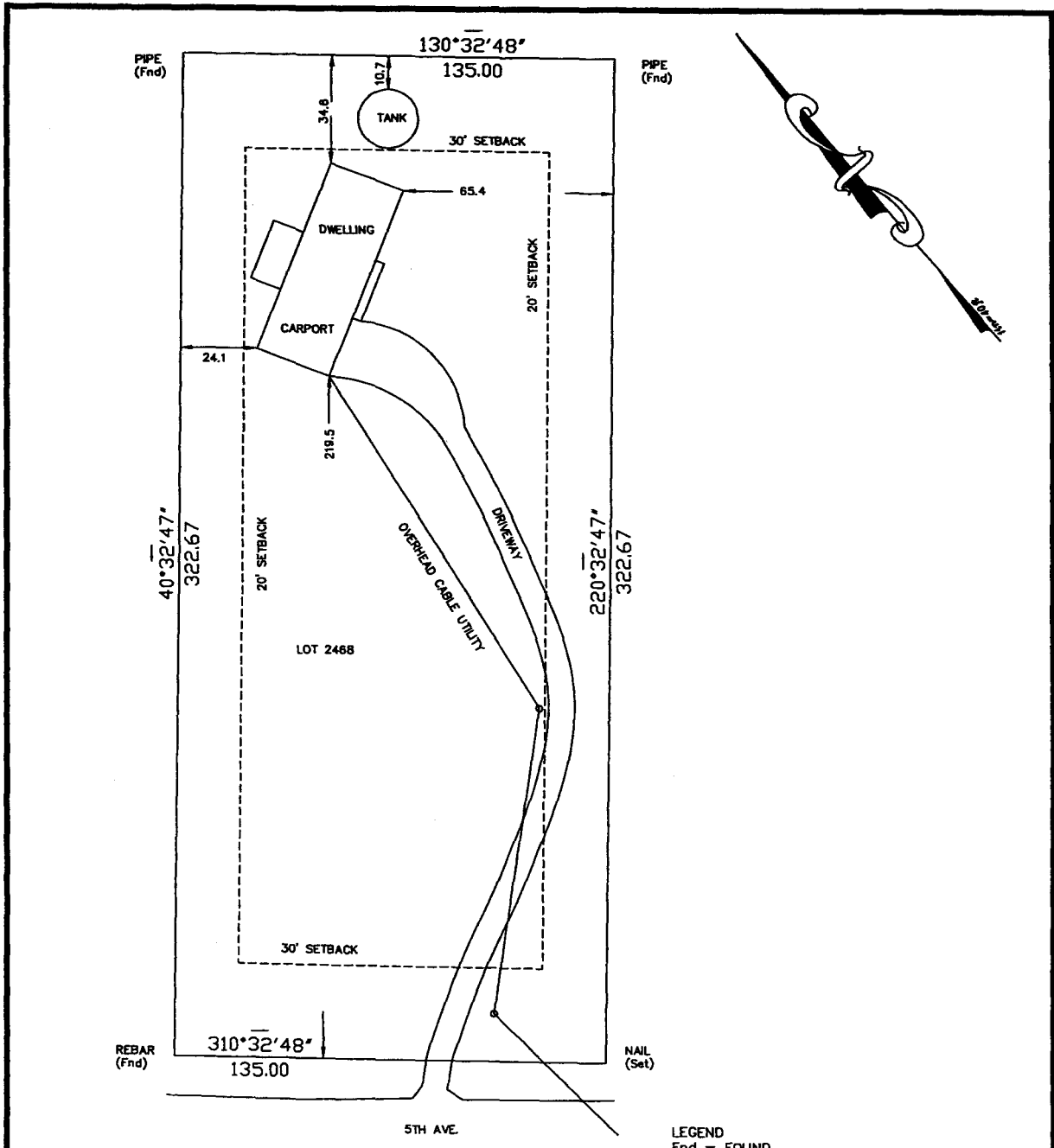
MICHAEL YEE  
Planning Director

LHN:jaa

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Encl.: Exhibit A  
General Petition for Appeal of Decisions by Planning Director form

Cc: Gilbert Bailado, Planning GIS (via email)



- LEGEND
- Fnd = FOUND
  - LPG = LIQUID PROPANE GAS TANK
  - WWS = WASTE WATER SYSTEM
  - H = HAWAII ELECTRIC LIGHT CO.
  - HT = HAWAIIAN TELCOM
  - TV = CABLE TELEVISION
  - WM = WATER METER
  - DI = DRAIN INLET
  - EASEMENT - - - - -
  - WIRE FENCE - - - - -

NOTES :  
 Azimuths and coordinates are referred to government Survey  
 Triangulation Station.  
 Elevations if any are referred to Assumed Datum.  
 Features shown here on represent conditions existing  
 on August 22, 2019.



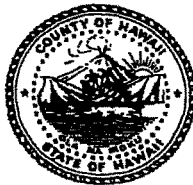
THIS WORK WAS PREPARED BY  
 ME OR UNDER MY SUPERVISION.

*Roger D. Fleenor*

ROGER D. FLEENOR LS 7276, HAWAII  
 My License Expires on April 30, 2020  
 PO Box 383414  
 Waikoloa, HI 96738

K-2 SURVEY MAP OF LOT 2468  
 ACCORDING TO L.C. AW. 1053 MAP 58  
 AT KEEAAU, PUNA, HAWAII  
 ISLAND AND COUNTY OF HAWAII  
 STATE OF HAWAII  
 SHOWING EXISTING IMPROVEMENTS  
 T.M.K. (3 Div.) 1-5-053-144

**EXHIBIT**  
 A



## 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).