

#1421

CERTIFIED MAIL

December 12, 1990

Mr. Robert Peterson
Rural Box 6
73-4569 Kohanaiki Road
Kailua-Kona, HI 96740

Dear Mr. Peterson:

Variance Application (V90-15)
Minimum Setback Requirements
Tax Map Key: 7-3-8:71

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request to allow the use of an existing shed building as a macadamia nut processing and bottling facility with a minimum 65 feet setback requirement as stipulated in the County Zoning Code. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum setback requirements for the proposed use of the existing garage/storage shed as a processing facility. The structure was originally constructed in 1982 for the purposes of a storage shed for the agricultural uses on the subject property. As such, the minimum 30 foot yard setback requirement was imposed rather than the 100 feet for a processing facility in accordance with the Agricultural (A-3a) zoned district. The applicant now proposes to convert the garage/storage shed use for the purposes of a macadamia nut processing and bottling facility. With this change in use, the Zoning Code imposes a minimum requirement of 100 feet from any property line.

It should be noted that the entire existing structure is encroaching within the minimum 100 foot setback. Any expansion to the structure would add to the encroachment situation.

There are no evidence that substantiates that the existing structure or a new processing facility could not be relocated or constructed on other portions of the subject property without a variance.

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Therefore, considering the foregoing, it is determined that there are no special or unusual circumstances applying to the subject property which exist 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 subject property.

ALTERNATIVES

The petitioner does have other design alternatives. A new processing facility or relocation of the existing structure could be situated on other portions of the property without the necessity of a setback variance.

The petitioner would be able to expand (when the need arises) the proposed facility and comply with the minimum 100 foot setback requirement. Further, should a new facility be constructed, the existing use of the shed structure would not be disrupted.

The petitioner claimed that the garage/storage shed structure was built not meeting with the minimum 100 foot setback requirement. As mentioned earlier, the structure was constructed in 1982 as a storage shed for agricultural purposes and, therefore, the minimum 100 foot setback did not apply then. There are other reasonable options in view of circumstances for this situation.

INTENT AND PURPOSES

The intent and purpose of the minimum building setback requirements on a property are to assure that adequate air, light, circulation and visual and spatial considerations are available between structures and property lines. In this particular request, the existing garage/storage shed is located toward the front corner portion of the subject property, is at a minimum 65 feet from the west (front) boundary and is proposed to be utilized as a macadamia nut processing and bottling facility. The Zoning Code requires a minimum 100 foot setback requirement from any property line for a processing facility. Should any dwelling be constructed on the nearest affected property(ies) and imposing the minimum 30 foot front yard setback, there would be a distance of a minimum 125 feet between the processing facility and the proposed dwelling. The location of the existing shed structure at the front of the property would not provide sufficient buffer area for potential noise and visual impact to surrounding properties and, therefore, would

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have an adverse impact on the development of the affected adjacent properties.

In view of the above issues, this variance request would not be consistent with the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will be materially detrimental to the public's welfare; and will cause substantial adverse impact to the area's character and to adjoining properties.

Based on the foregoing, the Planning Director concludes that the evidence presented and the facts shown do not warrant the approval of the variance request from the minimum 100 foot setback requirement.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

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All Actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please feel free to contact us.

Sincerely,



NORMAN HAYASHI
Planning Director

AK:sha
Enc.: Background Report
cc: Planning Commission (w/enc.)