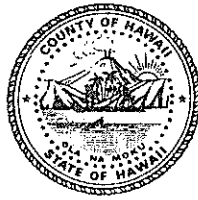


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

November 6, 2002

Ms. Dien Nekoba  
610 Kekuanaoa Street  
Hilo, HI 96720

Dear Ms. Nekoba:

**VARIANCE PERMIT NO. 1332 (VAR 02-056)**

**Applicant:** DIEN NEKOBA  
**Owner:** STATE OF HAWAII (WEI YANG-LEASEE)  
**Request:** Variance from Minimum Yards,  
Chapter 25, the Zoning Code  
**Tax Map Key:** 1-5-116:006, Lot 6

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1332 allows portions of the dwelling improvements with a minimum 21.5 feet to 29.8 feet front yard and attendant minimum 18.0 feet to 24.0 feet front yard open spaces, "AS BUILT", to remain on the property according the variance site plan map dated May 11, 2002. The variance request is from the subject property's minimum 30 feet front yards and attendant 24 feet side yard open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 6 consisting of approximately 10.000 acres, is located within the Keonepoko Iki Farm Lots Subdivision, Phase II, File Plan 1714, and situated at Keonepoko Iki, Puna, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about July 22, 2002. The applicant's variance application site plan or survey map drawing is drawn to scale and dated May 11, 2002. The survey map by Paul H. Murray & Associates, LLC shows the dwelling and garage position and roof eave locations, "AS BUILT", on "LOT 6".

**Note:** The variance request does not address the location of cesspool or other individual wastewater system (IWS) on Lot 6.

3. **Agency Comments and Requirements-(VAR 02-056):**

- a. The State Department of Health (DOH) memorandum dated August 27, 2002, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

- b. The Department of Public Works (DPW) memorandum dated September 17, 2002 states:

"We have reviewed the subject application forwarded by your memo dated August 20, 2002 and have no comments or objections to the request."

4. **Notice to Surrounding Property Owners**. Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first notice was mailed on July 23, 2002 by the applicant. Due to a misunderstanding or oversight by the applicant the second notice was mailed on October 11, 2002 by the applicant. (Refer to text below).
5. **Comments from Surrounding Property Owners or Public**. No further written agency comments were received and no objections from the surrounding property owners or the public were received.

A letter from Floral Resources Hawaii, Inc. dated October 28, 2002 supporting the applicant's request was received on October 31, 2002.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment problems were discovered during escrow or sale of the subject property. The applicant, on behalf of the owners, is trying to resolve building encroachment issues and states, the site plan map was prepared by a surveyor and shows the dwelling position, "AS BUILT", on Lot 6. This site plan shows that portions of the dwelling were constructed beyond the lot's building lines or building envelope into one of Lot 6's front yard and the attendant front yard open space requirement, pursuant to the Hawaii County Zoning Code. The applicant, on behalf of the owners (leasee) became aware of the encroachment issues after the survey map was prepared and presented during escrow.

No evidence has been found to show indifference or premeditation by the previous leasee or owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling improvements were constructed under valid building permits and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments or redesigning or relocating portions of the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

It appears that the small dwelling or building encroachments within the affected front yard is not physically noticeable or visually obtrusive from the rights-of-way and other surrounding

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property. It appears that these small building encroachments have not affected the adjoining property(s) or neighborhood or severely changed or altered the surrounding land patterns. Therefore, it is felt that these building encroachments within the minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 20, 2002. Due to an oversight by the applicant to mail a second notice to the surrounding property owners, additional time to October 31, 2002 was allowed and the decision date was extended until on or before November 15, 2002. No oral or written objections to the variance request or application were received from surrounding property owners.

Based on the foregoing findings and other circumstances, this variance request 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**

This variance request is approved subject to the following conditions:

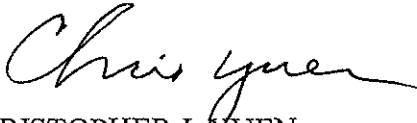
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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. Portions of the dwelling improvements will not meet Chapter 25, the Zoning Code's minimum front yard and attendant front yard open space requirements. The approval of this variance allows the dwelling or the building improvements and encroachments identified on the variance application's site plan map dated May 11, 2002, to remain, "AS BUILT", on Lot 6 or the subject TMK property.

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4. Future 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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Real Property Tax Office  
Planning Dept. - Kona