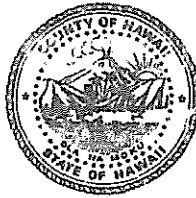


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

May 10, 2006

Mr. Peter Boucher  
1537 Kalote Place  
Hilo, HI 96720

Dear Mr. Boucher:

**SUBJECT: VARIANCE PERMIT-VAR 06-024**  
**Applicant: PETER BOUCHER**  
**Owner(s): PETER BOUCHER, ET AL.**  
**Request: Variance from Chapter 25, Zoning,**  
**Minimum yards**  
**Tax Map Key: 2-4-006:103, Lot N**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit-VAR 06-024 permits portions of a dwelling to remain on Lot N (corner lot), "AS-BUILT", with a minimum 20.7 +/- feet front yard and attendant minimum 17.00 +/- feet front yard open space in lieu of the minimum 30.00 feet front yard measured from the property's front boundary line along Kalote Place and minimum 32.9 +/- front yard and attendant 29.00 +/- feet front yard open space in lieu of the minimum 40.00 feet front yard measured from property's front boundary line along Hoaka Road according to the variance site plan maps submitted by the applicant. The variance is from the TMK property's minimum front yard(s) and attendant front yard open space requirements of Lot N pursuant to the Hawaii County Code, Chapter 25, Zoning, 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 space requirements, (a).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, LOT N containing approximately 4.139 acres, "NANI O WAIAKEA ESTATES" is a portion of Lot 1013, and is situated at Waiakea, South Hilo, Hawaii.

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The property is zoned Agricultural (A-3a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about March 8, 2006 and March 28, 2006. The variance application's site plan map is drawn to scale and prepared by Inaba Engineering. The variance site plan map, dated August 24, 2000, denotes portions of the "DWELLING" were built within the property's front yard(s) of "LOT N" or subject TMK property.

The applicant's background states in part:

"Original dwelling was constructed with approved building permit #68641 in 1974. We purchased the property in 1997 unaware that the dwelling had been constructed within the 30 foot setback from front/side boundaries. The dwelling was built within 30 feet of the projections of the roads, but did not take into consideration the curved intersection of Hoaka Road and Kalote Place (see attached).

In 1998, we received an approved (sic) building permit #980816 for an addition. During construction, it became apparent that the renovation work included minimal addition additional construction with the setback. This consisted of portion of a closet. The design was designed and stamped by James McKeague, a licensed architect. We were not informed at the time that the proposed work was within the setback."

**Note:** The variance site plan map does not identify the dwelling's cesspool or Independent Wastewater System (IWS) within the property. In addition the variance site plan does not denote the "future road width lines" to be taken from the property's front boundary lines along Hoaka Road and Kalote Place or other building or landscaping improvements situated between the property's front boundary lines and completed dwelling improvements.

3. **County Building Records:**

County building records show 2-Building Permits (910850, 980816), Electrical Permits (E981300, E990188), and Mechanical (M980610) or Plumbing Permit were issued to subject TMK property. It appears that the original dwelling and recent dwelling additions were built pursuant to these building and associated construction permits issued during 1991 and 1998. County records indicate both

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building permits and associated construction permits issued to the subject TMK property or "LOT N" were closed or "finaled" by the DPW.

4 **Agency Comments and Requirements-VAR 06-024:**

- a. The Department of Public Works (DPW) comment(s) dated April 21, 2006 states:

"NO COMMENTS"

- b. The State Department of Health (DOH) memorandum dated May 1, 2006 states:

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

- 5 **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first notice(s) were mailed on March 10, 2006 and April 5, 2006 and second notice mailed on April 20, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 12, 2006 and May 8, 2006.

6. **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.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within the affected minimum front yard(s). The variance application's site plan map was prepared by a surveyor and denotes the location of the "DWELLING" and other site improvements, "AS BUILT", on "LOT N". The current owners became aware of encroachment issues after completing the building improvements and survey of the property was completed. No evidence has been found to show indifference or premeditation by the previous or current owner(s) or builders to deliberately create or intentionally allow these building encroachments to be built within the affected front yards.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 2-building permits and other associated construction permits issued to

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subject TMK property. It appears that during construction of the original and dwelling addition were completed in 1998 and 1999, respectively. During the construction of the dwelling (over a 15 year period), the dwelling encroachment within the property's front yards went unnoticed.

### **ALTERNATIVES**

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

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot "N" with rights-of-way fronting the property and resubdivision to modify property lines or adjust 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 recent building additions and encroachments within the affected front yards were constructed approximately 8 years ago ( Note: It appears that the dwelling improvements were built or constructed during a 15 year period beginning in 1991 to 1999) within the affected minimum front yard(s) and respective front yard open yard spaces; and, these encroachments are not physically and/or visually obtrusive from the adjoining property(s) or detectable from both rights-of-way (Hoaka Road and Kalote Place). It appears that these dwelling improvements recent building additions within the affected minimum front yards not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected side yard identified on the variance application's site plan map and survey report will not detract from the character of the immediate neighborhood or the subdivision.

Based on the foregoing findings, 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.

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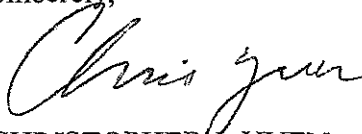
**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicant/owner, 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 a dwelling located on "LOT N" will not meet the minimum front yard(s) and attendant minimum front yard open space requirements pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the "DWELLING" improvements to remain on "LOT N", "AS BUILT", according to the variance site plan map dated August 24, 2000.
4. Future or new 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-(Hilo)