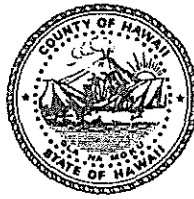


Harry Kim  
Mayor



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

December 26, 2006

Mr. Kenneth T. Richardson, Jr. and  
Mrs. Mary Lou Richardson  
c/o Mr. Bill Ryan  
10945 East Tierra Drive  
Scottsdale, AZ 85259-5731

Dear Mr. and Mrs. Richardson:

**VARIANCE-VAR 06-059**

**Applicants:** KENNETH T. RICHARDSON, JR., ET AL.

**Owners:** KENNETH T. RICHARDSON, JR., ET AL.

**Request:** Variance from Chapter 25, Zoning  
Minimum yards

**Tax Map Key:** 7-4-003:014

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-059 subject to variance conditions. Variance 06-059 allows an "OPEN CARPORT", "AS-BUILT", with a minimum 14.84 feet to minimum 17.55 feet front yard open space, "SINGLE STORY RESIDENCE", "AS-BUILT", with minimum 18.81 feet to minimum 19.33 feet front yard and attendant minimum 16.73 feet to minimum 17.25 feet front yard open space, and "SINGLE STORY RESIDENCE", "AS-BUILT", with minimum 13.69 feet to minimum 18.04 feet side yard and attendant minimum 11.91 feet side yard open space to minimum 14.00 feet side yard open space, to remain on Lot No. 5 in lieu of the property's minimum 30.00 feet front yard and attendant minimum 24.00 feet front yard open space; and minimum 20.00 feet side yard and attendant minimum 14.00 feet side yard open space, according to variance site plan map dated and signed September 9, 2006. The variance is from the TMK property's minimum front yard, minimum side yard, and minimum front yard open space and minimum side yard open space requirements pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-5-77, Other regulations, 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, containing 2.929 acres, is Lot No. 5 of "KEALAKEHE HOMESTEADS", being a portion of Grant No. 3924 to P. Peahi, and situated at Kealakehe, North Kona, Hawaii. The TMK property's address is 74-1055 Homestead Road.

The property is zoned Agricultural (A-20a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted revised variance application, attachments, and filing fee on or about October 13, 2006. The variance application's site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc. The variance site plan map, signed and dated September 9, 2006, denotes portions of the "OPEN CARPORT", "SINGLE STORY RESIDENCE/LANAI", and "SINGLE STORY RESIDENCE" were constructed into the property's minimum 30 feet front yard and minimum 20 feet side yard(s) of subject TMK property.

The applicant's background states in part:

"We purchased this property in as-is condition December 2005. All the improvements were already in existence with the existing set back violations and boundary encroachment. The improvements were built in 1998-1999 by a previous owner and the main house, farm dwelling and warehouse were all permitted. The pump shed and water tank were also already in existence. We do not know how many years they have been there, but they were existing in their current location when we purchased the property. We were told originally by the seller's realtor that the water tank serviced the surrounding properties and was owned by the water company, but sat on our property. We found out that this was not correct. The shed is a three sided shed with a plastic roof and one side completely open that functions to keep rain away from the pump motor. I contacted the Department of Public Works Building Division concerning the pump shed and water tank. What I was told by them is if the items are over 6' in height, then I would need to permit them and subsequently would need to address any encroachments to the set backs. If they are less than 6' in height then they are not a concern to them. I have enclosed two pictures of the pump shed and water tank."

**Note:** The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of a "WATER TANK", "PUMP HOUSE", fencing, walls, and landscaping, etc. along or straddling common boundary lines.

Subsequent to the above, the applicant submitted photographs of the Water Tank/Pump House constructed by the original owner(s) for review. The water tank/pump unit does not exceed 6 feet height and the average height of a shed shielding the water tank and pump from the weather is positioned on "higher ground" or slope. Photographs of the pump and shed constructed by the previous owners including measurements by the applicant taken from the roof to adjacent ground indicate the average height of the shed is less than 6 feet height. In addition, the outstanding building permits and other related construction permits were inspected by Kona DPW-Building Division staff on December 5, 2006 and November 29, 2006, respectively. According to Real Property tax records, the building permits and related construction permits issued to the TMK property were "COMPLETED". (Refer to agency comments and other discussion below).

3. **County Building Records:**

County building records show 3-Building Permits (996224, 005032, B2006-2078H), 3-Electrical Permits (E885329, E996421, E2006-1522K), and 2-Mechanical (M996122, M2006-1634K) or Plumbing Permit were issued to subject TMK property. It appears that these permits were issued to the subject TMK property between 1988 and 2006.

4. **Agency Comments and Requirements-VAR 06-059:**

- a. The Department of Public Works (DPW) memorandum dated November 6, 2006 states in part:

"We reviewed the subject application and our comments are as follows:

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. The applicant shall remove any encroachments from Homestead Road right-of-way."

Mr. Kenneth T. Richardson, Jr. and  
Mrs. Mary Lou Richardson  
Page 4  
December 26, 2006

The attached DPW-Building Division memorandum dated November 6, 2006 states in part:

"We opposed the approval of the application for the reasons noted below.

The minimum setbacks shall be maintained as follows: Water tank shed to maintain minimum 3 ft. side, 3 ft. rear.

Others: BP 2006-2078H and E2006-1522K are still active. Water tank shed built without permit."

**Note:** Pursuant to the applicant, the building improvements constructed pursuant to BP 2006-2078H and E2006-1522K were inspected by Kona DPW-Building Division staff on December 5, 2006 and November 29, 2006, respectively. In addition, Real Property permit records indicate BP 2006-2078H and E2006-1522K were "COMPLETED" on December 5, 2006 and November 29, 2006, respectively.

- b. The State Department of Health (DOH) memorandum dated November 27, 2006 was received by the Planning Department on December 5, 2006. (Refer to copy of DOH memorandum in variance file).

**Note:** According to the applicant or owners, the existing cesspool location and septic system location constructed in association with the dwelling improvements are visible and clearly on and within the subject TMK property.

- 5 **Notice to Surrounding Property Owners.** The applicant submitted copies of notice sent to surrounding property owners and copies of mailing receipts to the Planning Department. For the record, the first and second notices were mailed on October 24, 2006 and November 1, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 29, 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.

Mr. Kenneth T. Richardson, Jr. and  
Mrs. Mary Lou Richardson  
Page 5  
December 26, 2006

### **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 property's minimum front and affected side yard(s). The variance application's site plan map was prepared by a surveyor and denotes the location of the building improvements and other site improvements, "AS BUILT", on "LOT NO. 5". It appears that the current owners became aware of building encroachment issues after they purchased the property and during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected yards and attendant minimum open yard spaces.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1988 and 2006, the building encroachment into the property's minimum front yard and affected side 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 No. 5 with the right-of-way and/or adjoining lot (TMK: 7-4-003:012, Lot No. 6) 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 original building encroachments within the property's minimum yards are not physically and/or visually obtrusive from the adjacent property (Lot No. 6) or right-of-way (Homestead Road). It appears that these recent or 18 +/- year old building encroachments into the property's minimum yards and attendant open yard spaces do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns.

Mr. Kenneth T. Richardson, Jr. and  
Mrs. Mary Lou Richardson  
Page 6  
December 26, 2006

Therefore, it is felt that these building encroachments into the affected 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 October 20, 2006 and additional time to revise the original variance background and discuss the DPW and DOH comments with the applicant was necessary. The applicant agreed to an extension of time for the Planning Director to render a decision on the subject variance application.

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.

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

This variance request is approved subject to the following conditions:

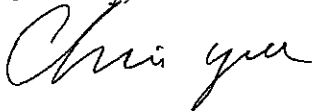
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 the "OPEN CARPORT", "SINGLE STORY RESIDENCE/LANAI", and "SINGLE STORRY RESIDENCE" on "LOT NO. 5" will not meet the minimum front yard and side yards and attendant minimum open yard space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated September 9, 2006. The approval of this variance permits these building improvements to remain, "AS BUILT", on the subject TMK property or "LOT NO. 5" according to the variance site plan map in subject variance file.

Mr. Kenneth T. Richardson, Jr. and  
Mrs. Mary Lou Richardson  
Page 7  
December 26, 2006

4. The applicants shall confer with the DPW-Engineering Division to address the "encroachments" within Homestead Road. The DPW shall identify or specify the "encroachments" within the Homestead Road; and, these "encroachments" shall be removed from the Homestead Road or relocated by the applicants or owners on subject TMK property prior to sale of the property or transfer of title of the property by the current owner(s) to others.
5. 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

WRY:cd  
P:\WP60\WRY\FORMLETT\VAR06-059ZCSETBACK\TMK74003014.RICHARDSON.1

xc: Real Property Tax Office-(Kona)  
DOH