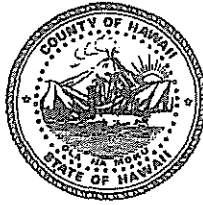


William P. Kenoi
Mayor



BJ Leithead Todd
Acting Deputy Planning Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

February 17, 2009

Mr. James Vierkoetter
P. O. Box 223185
Princeville, HI 96722

Dear Mr. Vierkoetter:

VARIANCE-VAR 08-059

Applicant: JAMES VIERKOETTER
Owners: DEAN KOZEL, ET AL.
Request: Variance from Chapter 25, Zoning,
Minimum Yards
Tax Map Key: 2-4-007:121, Lot 2

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-059 subject to variance conditions. The variance allows portions of detached water tank to remain upon Lot 2 with a minimum 19.1 feet front yard and minimum 19.1 feet front yard open space in lieu of minimum 30.00 feet side yard and attendant minimum 24.00 feet front yard open space requirements pursuant to the plot plan or survey map submitted with the variance application. The variance is from the TMK property's minimum front yard and minimum front yard open yard space pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), 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, Lot 2 containing 3.000 acres, portion of Waiakea Homesteads, is situated at Waiakea, South Hilo, Hawaii. The subject TMK property's address is 557 Alawaena Drive.

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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 September 19, 2008 and September 25, 2008. The variance application's site plan map is drawn to scale and prepared Island Boundary Inc. The variance site plan map, dated September 12, 2008, denotes a portion of a detached "Catchment Tank" was built into minimum 30 feet front yard of "LOT 2" or subject TMK property.

The applicant's letter dated September 19, 2008 states in part:

"I am seeking a variance for a catchment tank setback approval.

The tank has been placed on a safe, secure pad selected by the building contractor due to sloping topographies and natural drainage swails (sic) that collect runoff from neighboring properties and so witnessed during heavy rain periods in March, 2008. (approximately 45 inches in 4 days)"

In addition to the above, the applicant submitted digital photographs of the property including the following letter dated September 25, 2008 which states in part:

"Attached photo's for your information reference the location of our water catchment tank as placed on our property.

The current tank placement mitigates any future erosion issues and is situated on a safe, secure pad selected by the building contractor.

The present location fits well due to the sloping topographies and natural drainage swails (sic) that collect runoff from neighboring properties as witnessed during heavy rain periods in March/2008 (approximately 45 inches in 4 days).

The present location is not an "eyesore" and does not make a visual impact on adjacent homeowners.

The location allows for easy accessibility to complete cleaning and other maintenance functions."

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 fences and landscaping, etc. along or straddling boundary lines shared with abutting properties.

Authorization Letter-Dated January 13, 2009: The Planning Department received letter dated January 13, 2009 on January 22, 2009 designating James Vierkoetter to be "Applicant/Representative".

3. **County Building Records:**

Hawaii County Real Property permit records show 1-Building Permit (B2005-0666H), 1-Electrical Permit (E2005-2590H), and 2-Mechanical (M2006-1265H, M2005-1663H) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and detached water catchment tank on "LOT 2" was built pursuant to these building and associated construction permits issued between 2005 and 2006.

In view of the above, County permit records indicate the building permit (B2005-0666H) was issued to the applicant-James Vierkoetter or James W. Vierkoetter (Owner/Builder) on March 13, 2005 to construct the dwelling and including detached water tank upon the subject TMK property. Thus, the applicant or previous owner-James Vierkoetter is responsible for the placement and position(s) of the "completed" dwelling and detached water tank built upon the subject TMK property pursuant to building permit B2005-0666H.

The building permit B2005-0666H was completed or "finaled" by the DPW on June 16, 2006 before current owners-Dean Kozel, Et al. purchased the property according to County record on or about October 3, 2008.

4. **Variance Application-VAR 08-059-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated October 10, 2008 states:

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

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to a list surrounding property owners and proof of mailing notices to the Planning Department. According to the applicant's submittals, the first and second notices were sent or mailed by US Mail to surrounding property owners on September 22, 2008 and October 10, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 15, 2008.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following comments or letter(s) from surrounding property owner(s) or the general public were received:
 - 6a. Handwritten comments on notice signed by Paula Helfrich-Parcel #73 on received on October 21, 2008.
 - 6b. Letter dated October 17, 2008 and comments from Al and Nancy Cabral received on October 22, 2008.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address the position of the detached water tank constructed into the subject TMK property's minimum 30 feet front yard required by the Zoning Code. The variance application's site plan or survey map was prepared by a surveyor and is dated September 12, 2008. The survey map denotes the position of the dwelling and detached water tank improvements and other site improvements constructed upon "LOT 2". It appears that the applicant and owners became aware of water catchment tank encroachment into the property's minimum 30 feet front yard during escrow.

According to County permit records, the applicant or owner/builder-Vierkoetter constructed the dwelling improvements and detached water tank pursuant to building permit and other associated construction permits issued to subject TMK property between 2005 and 2006. It appears that during construction of the dwelling including detached water tank between 2005 and 2006, portions of the dwelling's water catchment tank constructed into the property's minimum 30 feet front yard went unnoticed by the builders and agencies.

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 detached water tank to fit within the correct building envelope denoted on the original site plan meeting with Zoning Code.
2. Consolidation of subject TMK property with right-of-way (Alameda Road) fronting subject TMK property or Lot 2 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.

The applicant's background information dated September 25, 2008 states in part:

"The current tank placement mitigates any future erosion issues and is situated on a safe, secure pad selected by the building contractor.

The present location fits well due to the sloping topographies and natural drainage swails that collect runoff from neighboring properties as witnessed during heavy rain periods in March/2008 (approximately 45 inches in 4 days).

The present location is not an "eyesore" and does not make a visual impact on adjacent homeowners."

It appears that the final position of the dwelling and detached water tank deviates from the approved site plan attached to detailed building construction plans to construct the dwelling and water tank assigned the building permit. The position of the dwelling and position of the detached water tank and portions of the water tank constructed into the property's minimum 30 feet front yard went unnoticed by County building inspectors. County permit records show the dwelling and detached water tank was completed or "finaled" by County inspectors on June 16, 2006 or approximately 2 years after the dwelling and water catchment tank improvements or the catchment tank encroachments into the property's minimum front yard were disclosed by the survey map dated September 12, 2008 during escrow. In view of the foregoing and other unusual

circumstances, it is felt that the position of the current detached water catchment tank constructed upon the property and portions of the water tank constructed into property's minimum 30 feet front yard along Alameda Road identified on the variance application's site plan or survey map will not detract from the character of the immediate neighborhood or the subdivision and may remain by variance subject to a variance condition requiring any replacement water tank or new water tank constructed upon "LOT 2" or upon subject TMK property to meet with the minimum requirements of the Zoning Code.

The subject variance application was acknowledged by letter dated October 2, 2008 and additional time for the applicant to submit additional information and agency comments was necessary. The applicant agreed to an extension of time to complete the variance background report and granted the Planning Director additional time to render a decision on the applicant's variance application.

Based on the foregoing findings and unusual circumstances, the applicant's 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 dwelling's water tank or "Catchment Tank" located upon "LOT 2" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map or survey map dated September 12, 2008. The approval of this variance permits the "Catchment Tank" improvements to remain, upon subject TMK property or "LOT 2" according to the variance site plan map or survey dated September 12, 2008.

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Any replacement water catchment tank or future detached water tank required for the dwelling shall meet minimum Zoning Code requirements.

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future or new building improvements and permitted uses including catchment tank or detached water tank for the dwelling 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,



BJ LEITHEAD TODD
Acting Deputy Planning Director

WRY:cs

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xc: Real Property Tax Office-Hilo
Al and Nancy Cabral
Paula Helfrich