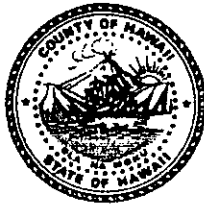


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

April 30, 2014

Ms. Kathleen Burnham
P. O. Box 865
Volcano, Hawai'i 96785

Dear Ms. Burnham:

SUBJECT: Application: Variance VAR-14-000201
Applicant: KATHLEEN BURNHAM
Owners: RAYMOND & KATHLEEN BURNHAM
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest and Northeast Side Yard Setback and Northeast Side Yard Open Space)
TMK: 1-9-008:080 (Lot 4-A)

The Planning Director certifies the **approval** of VAR-14-000201 subject to variance conditions. The variance will allow the "as-built", two-story workshop to remain on Lot 4-A, with a minimum 9.34 feet southwest side yard setback. This is in lieu of the required minimum 10-foot side yard setback requirement. This variance will also amend Variance 1176 (VAR-00-000080) approved on January 23, 2001. This variance is from the subject property's minimum northwest and southeast side yard setback and associated southeast side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 19,803 square feet and is located in the Mariner Tract Subdivision, situated in the District of Puna, Hawai'i. The subject property's street address is 19-4034 Kilauea Road.

2. **County Zoning.** Single-Family Residential – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban.
4. **Required Setback.** 20-feet for front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 14, 2014. The variance site plan map is drawn to scale, and prepared by Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC) and denotes the position of the two-story workshop and detached water tank constructed into the minimum 10-foot side yard setback and 5-foot side yard open space. The request affects the northwest and southeast side yard setback.

A site inspection by Planning Department staff conducted on April 15, 2014 shows that the structure located along the southwest corner of the subject property is in actuality a two-story workshop and not a house as reflected on the survey site plan dated March 3, 2014.

The survey site plan shows that the two-story workshop encroaches 0.66 feet (7.92 inches) into the southwest side yard setback. It also shows that the as-built detached water tank encroaches 6.6 feet into the northeast 10-foot side yard setback and the associated 5-foot side yard open space.

On January 23, 2001, Variance 1176 (VAR-00-000080) was approved and allowed for the detached water tank on lot 4-A to remain with a 5-foot northeast side yard setback and a 2.5 foot side yard open space. However, a few months ago the existing water tank was destroyed by lightning and a new water tank was placed to its original position. When a more modern and recent survey was conducted on March 3, 2014 by Niels Christensen, LPLS it was determined that the detached water tank currently encroaches 6.6 feet into the northeast side yard setback and associated side yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#882039) was issued on October 18, 1988 to the subject property for a single-family dwelling consisting of a 2 bedroom, 2 bath, living room, kitchen and dining area. A subsequent permit was issued (B2009-0170H) on January 29, 2009 for the detached two-story workshop.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 11, 2014. (See attached.)
 - b. The Department of Public Works – Building Division e-mail dated March 25, 2014. (See attached.)

8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on March 17, 2014 and March 24, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 11, 2014.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Twenty no-objection form letters were received.
 - b. Objection letter received on March 28, 2014 from Harold Tonda.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (a) *There are special or unusual circumstances applying to the subject real property which exist either 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 property.*

The variance application meets criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the as-built, two-story workshop into the 10-foot southwest and the detached water tanks into the 10-foot northeast side yard setback as required by the Zoning Code.

The site plan prepared by Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC) shows that the two-story workshop encroaches 0.66 feet (7.92 inches) into the southwest side yard setback. It also shows that the as-built detached water tank encroaches 6.6 feet into the northeast 10-foot side yard setback and associated 5-foot side yard open space.

On January 23, 2001, Variance 1176 (VAR-00-000080) was approved and allowed for the detached water tank on lot 4-A to remain with a 5-foot northeast side yard setback and a 2.5 foot side yard open space. However, a few months ago the existing water tank was destroyed by lightning and a new water tank was placed to its original position. When a more modern and recent survey was conducted on March 3, 2014 by Niels Christensen, LPLS it was determined that the detached water tank currently encroaches 6.6 feet into the northeast side yard setback and associated side yard open space.

The variance request is to legitimize the additional encroachments discovered when a more recent survey was completed March 3, 2014. The additional encroachments discovered could

be attributed to more sophisticated and precise survey equipment used today than those used 14 years ago when the original water tank was installed.

The recent survey also disclosed that the two-story workshop encroaches 0.66 feet (7.92 inches) into the southwest side yard setback. The encroachment of 0.66 feet (7.92 inches) is rather miniscule, but exceeds the limit of falling under the De Minimis exception. Due to the approximate 0.66 feet encroachment into the southwest side yard setback, it appears that this was an error and not intentional. Therefore, no evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the two-story workshop and water tank encroachment problems to occur.

Based on the above mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected rear and side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the as-built, two-story workshop and detached water tanks constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would leave large and unattractive reconstruction disfigurement to the. Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks.

Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria (c) for the following reasons:

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.

An objection form letter was received and signed by Harold Tonda; no comments or reason for the objection were stated.

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. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the water tank and the two-story workshop built upon the subject property ("LOT 4-A") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance 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. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. Should the two-story workshop and detached water tank (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

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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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-14-000201 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Kathleen Burnham
Page 7
April 30, 2014

NEIL ABERCROMBIE
GOVERNOR PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 APR 14 PM 12:49



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 11, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye *N*
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR-14-000201
Applicant: KATHLEEN BURNHAM
Owner: RAYMOND & KATHLEEN BURNHAM
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Southwest and Northeast
Side Yard Setback and Northeast Side yard Open Space.)
Tax Map Key: 1-9-008:080; Lot 4-A

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

Nakayama, Larry

PLANNING DEPARTMENT
COUNTY OF HAWAII

1-9-008:08D

From: Matsumoto, Joy
Sent: Tuesday, March 25, 2014 8:28 AM
To: Nakayama, Larry
Subject: VAR-14-000199 & 14-000201

2014 APR 11 PM 3:07

Hi Larry,

The Building Division has no concerns regarding these two variance requests.

Joy Matsumoto

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: jmatsumoto@co.hawaii.hi.us

SCANNED
APR 15 2014
By: **091138**