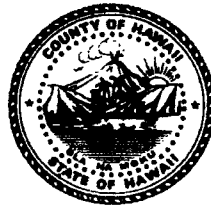


William P. Kenoi
Mayor



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

January 13, 2016

John Bartholomew
861 Hoolaulea Street
Hilo, Hawai'i 96720-3677

Dear Mr. Bartholomew:

SUBJECT: Application: Variance - VAR 15-000333
Applicant: JOHN B. BARTHOLOMEW
Owner: JOHN B. BARTHOLOMEW TRUST AND
CYNTHIA L. BARTHOLOMEW TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements. (Encroachment into Northwest Side Yard
Setback and Open space)
Tax Map Key: 1-5-050:023; Lot 2286

The Planning Director certifies the **approval** of Variance 15-000333, subject to conditions. The variance will allow a section of the "out building" (shed) to remain on Lot 2286, with a minimum 16-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection, resulting with a 13-foot side (northwest) yard open space in lieu of the required 14-foot open space requirement. The variance is from the subject property's minimum 20-foot side yard setback and 14-foot side yard open space requirement. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 43,560 square feet (1 acre) and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1717 6th Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30-feet for front and rear; 20-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 24, 2015. The variance site plan is drawn to scale, prepared by the Richard Sunden L.P.L.S. (Chartwell Land Surveying LLC) and denotes the position of the out building (shed) constructed into the minimum 20-foot side yard setback 14-foot side yard open space. The request affects the northwest side yard setback.

The survey map shows that portion of the out building (shed) encroaches 4 feet into the 20-foot side (northwest) yard setback and 1 foot into the 14-foot side (northwest) yard open space.

The encroachment leaves a minimum 16-foot side (northwest) yard setback, in lieu of the required 20-foot side (northwest) yard setback and associated roof eave projection resulting with a 13-foot side (northwest) yard open space in lieu of the required 14-foot side (northwest) open space requirement.

The site plan also shows that portion of the water tank encroaches 0.80 feet (9.6 inches) into side (northwest) yard setback. However, these encroachments are in compliance with **Hawai'i County Code, Chapter 25, (Zoning); Section 25-4-43, fences and accessory structures.** (c): any accessory structure, including any fence, or wall over six feet in height, architectural feature or water tank, which is not connected to a building, may not exceed into any required front, side or rear yard, but may be located next to any building without any open space requirements.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#030389) was issued on March 4, 2003 to the subject property for a single-family dwelling consisting of 4 bedrooms, 3 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 30, 2015. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
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 November 25, 2015 and December 14, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 15, 2015.

9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 out building (shed) into the 20-foot northwest side yard setback.

The survey map shows that portion of the out building (shed) encroaches 4 feet into the 20-foot side (northwest) yard setback and 1 foot into the 14-foot side (northwest) yard open space.

The encroachment leaves a minimum 16-foot side (northwest) yard setback, in lieu of the required 20-foot side (northwest) yard setback and associated roof eave projection resulting with a 13-foot side (northwest) yard open space in lieu of the required 14-foot side (northwest) open space requirement.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 2000, nearly 15 years ago, were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 water tank encroachments constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the out building (shed) denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

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. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

(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 structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/ uses and boundary/property lines.

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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the existence of the agricultural shed and open carport.

In addition, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately-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 out building (shed) built upon the subject property ("LOT 2286") 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:

John Bartholomew

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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 Hawai'i 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. An Ohana or additional farm dwelling shall not be granted 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 "out building" (shed) 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.
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-15-000333 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR15-000333TMK1-5-050-023 Bartholomew.doc

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

John Bartholomew
Page 6
January 13, 2016

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

2016 JAN 5 PM 2 01

PLANNING DEPARTMENT
COUNTY OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 318
HILO, HAWAII 96721-0318

MEMORANDUM

DATE: December 30, 2015

TO: Mr. Duane Kanaha
Planning Director, County of Hawaii

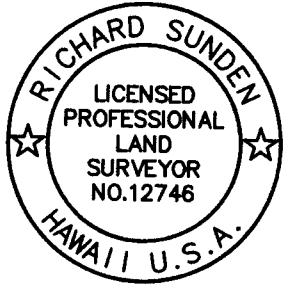
FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance - VAR-15-000333
Applicant: JOHN BARTHOLOMEW
Owner: JOHN AND CYNTHIA BARTHOLOMEW
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into the Northwest Side
Yard Setback)
Tax Map Key: 1-5-050:023; Lot 2286

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

WORKID: VAR-15-000333.ch

102928

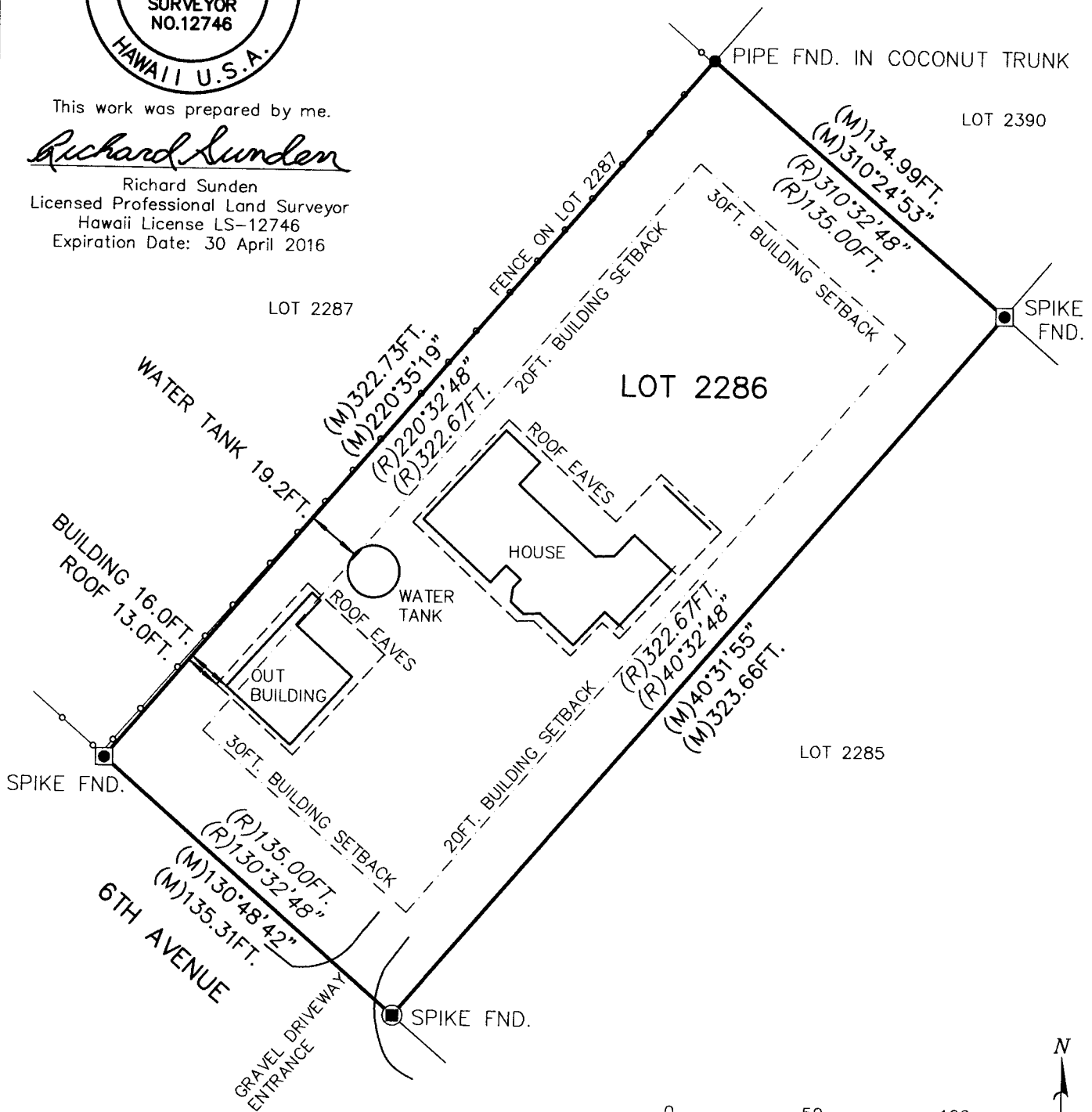


K2 SURVEY OF LOT 2286, BLOCK 7,
HAWAIIAN PARADISE PARK
KEA'AU, PUNA, ISLAND OF HAWAII
HAWAII

This work was prepared by me.

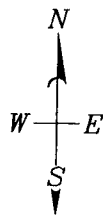
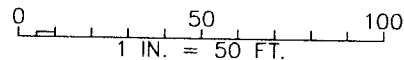
Richard Sunden

Richard Sunden
Licensed Professional Land Surveyor
Hawaii License LS-12746
Expiration Date: 30 April 2016



NOTES:

1. The field survey was completed on 3 May 2015.
2. Measured dimensions, labeled (M), show the size of the lot. Record dimensions, labeled (R), are shown for comparison.
3. The parcel's boundary corners meet expected accuracy for this subdivision.
4. The attached report explains the results of this survey.



TMK: (3) 1-5-050:023

8.5 x 11

4 May 2015
JOB 15016

ChartWell
LAND SURVEYING LLC
HC 1 Box 4058
Kea'au HI 96749
(808) 896-9167
Email: info@chartwell-ls.com