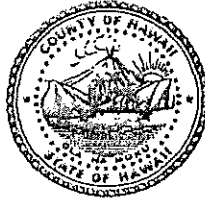


Harry Kim  
Mayor



Christopher J. Yuen  
Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL  
7000 0600 0024 2904 2480

December 14, 2000

Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
OF HAWAII.  
586 Kanoelehua Avenue  
Hilo, HI 96720

Dear Mr. Iwamoto:

**VARIANCE PERMIT NO. 1173 (VAR 00-069)**

**Applicant: KEITH T. IWAMOTO**

**Owners: JOJI I. OSHIMA, ET AL.**

**Request: Variance from the Minimum Yards and Permitted Projections  
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning,**

**Tax Map Key: 2-5-005:021, Lot 43**

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1173 allows portions of the existing dwelling and attached open carport located on the subject property, pursuant to a site plan dated August 6, 2000, to remain within the affected side yards and affected open spaces "AS BUILT" with a minimum side yard of 2 feet and 7.5 feet from the respective side boundary lines and the corresponding open spaces between roof eaves ranging from a minimum 1.0 feet to 2.91 feet and the respective side boundary lines in lieu of the minimum 8 feet side yard and 4 feet open space requirements, as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (1), (B), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

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Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 2  
December 14, 2000

### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum yards and open space requirements should be approved based on the following findings:

### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 4,500 square feet is described in and covered by Land Patent Grant No. 10585, Being Lot 43 of the "Ponahawaii House Lots", and is Situated at Ponahawaii, South Hilo, Hawaii. The property's address is 44 Kilua Street.

The property was zoned Single-Family Residential (RS-10) by the County in 1967. It appears that the subject property was subdivided before the Zoning Code, Chapter 25, of the Hawaii County Code was adopted in 1967. The subject property's average width and land area are below the minimum requirements for the RS-10 zone. The property is deemed "non-conforming" with respect to minimum average width and land area.

2. The applicant's representative submitted a transmittal letter, dated August 22, 2000 which states in part:

"Enclosed is a Variance Application for the above property. The property is currently in escrow and upon completion of the enclosed survey, it was discovered that the dwelling, carport and eaves encroach into the side yard setback. Building permits were issued to the original owners, Ralph & Lucy Walker and final inspections were approved. The current owners, Joji & Geraldine Oshima purchased the property in 1992 and were unaware of the encroachments.

The County Building Department did approve final inspections and building permits on this home and they apparently, were unaware of the encroachments as well.

We feel there are no other reasonable alternatives at this time to resolve the situation. We are, therefore, applying for subject variance.

We also believe that the approval of this variance would be consistent with the general purpose of the zoning district, the intent and purpose of the zoning and

Mr, Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 3  
December 14, 2000

subdivision codes and the County General Plan and will not be materially detrimental to the public welfare or have an adverse impact on the areas character or adjoining properties.”

3. It appears the site plans attached to the detailed building construction plans for the building permits to construct the dwelling and attached carport and other related site improvements (e.g. driveway location, cesspool) were reviewed and approved by the Planning Department and affected government agencies.

Note: Discussion regarding the location of existing fencing improvements on the subject property and removal or relocation of the fencing encroachments will be discussed and shall be addressed by the applicant or owner(s). Furthermore, the location of an existing cesspool is not identified on the plan submittal.

4. The site plan drawing, drawn to scale, by Paul H. Murray & Associates, LLC, dated August 6, 2000, identify the location of the dwelling, open carport and location of existing fencing improvements. Furthermore, the site plan denotes the distances between the respective dwelling/carport and affected side boundary lines. The site plan denotes the location of the existing fencing improvements along the boundary lines and fencing encroachments.

For the record, a recent site inspection was conducted of the area to view the subject building encroachments and surrounding site improvements by Planning Department staff.

5. The applicant submitted a copy of “REAL PROPERTY TAX CLEARANCE” dated August 17, 2000 stating:

“This is to certify that Oshima, Joji I/Geraldine M (Owner-of-record) has paid all real property taxes due the County of Hawaii up to and including June 30, 2000.”

6. No response or comment(s) to the Planning Department’s memorandum dated August 31, 2000 was received from the Real Property Tax Office.
7. The State Department of Health (DOH) memorandum dated September 11, 2000, in the subject variance file states:

“We have no objections to the proposed variance application. However,

Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 4  
December 14, 2000

minimum setback requirements for existing wastewater systems needs (sic) to be maintained."

8. The Department of Public Works (DPW) memorandum dated September 25, 2000, states in part:

"We have reviewed the subject application forwarded by your memo dated August 31, 2000 and oppose the approval of the application for the reason noted below.

The subject dwelling/structure has outstanding violations which shall be corrected.

The open carport is an illegal structure. No permit was taken out for the open carport.

Remove that portion of the existing chain link fence within the Kilua Road right-of-way which is owned and maintained by the County of Hawaii.

Questions regarding the outstanding violations and carport may be referred to the Building Division at 961-8331."

Note: It appears three (3) building permits (B.P. Nos. 761358, H38632, and H39285) were issued after the Zoning Code was adopted in 1967 to demolish an old dwelling and construct the existing dwelling/open carport. A copy of these building permit(s) were obtained from the DPW-Building Division and included in the variance file for the record. County building permit records show that all three (3) building permits were closed by the DPW-Building Division.

No building permit to construct the existing chain link perimeter fence was required by the County. Furthermore, pursuant to a recent telephone conversation with Hank Correa, RA, the chain link fence encroachments mentioned in the DPW memorandum were removed and relocated within the subject property boundaries.

9. Proof of mailing a first and second notice was submitted on September 13, 2000. For the record the first and second notice was mailed on August 29, 2000 and September 11, 2000, respectively by the applicant.

Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 5  
December 14, 2000

A letter dated September 13, 2000 objecting to the variance request was received from R. K. Wallace on September 15, 2000 and envelope postmarked Honolulu, Hawaii are included in the variance file for the record. Wallace did provide or list a return address or telephone number in the letter or on the envelope.

The building and fence encroachment problems were discovered during the sale of the subject property and escrow. The applicant submitted a recent survey map/site plan that identifies the location of the existing dwelling and fencing improvements. The site plan identifies the distance between portions of the dwelling and open carport and roof eaves from the affected side boundary lines. Portions of the existing dwelling, open carport, and attendant roof eaves were constructed and encroach into the respective side yards. According to the site plan and review of the plan by the DPW, it appears portions of the existing chain link fence encroach into the adjacent property and road right-of-way. The current owners were unaware of the building and fence encroachments when they purchased the property.

Therefore, considering the foregoing facts and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner/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 subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the current owners. Alternatives available to the applicant include the following: Removing the existing building encroachments, relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc., would be uneconomical at this time. The removal of the building encroachments and attendant roof eave(s) constructed by the previous owner(s) will disrupt the dwelling's/open carport's structural integrity and their relationship to each other and other site improvements.

The applicant, on behalf of the current owner(s), is honestly trying to resolve building encroachments that were established on the property by the previous owner(s). No evidence has been found to show indifference or premeditation by the current applicant/owner(s) to deliberately create or intentionally allow the building encroachment problems to occur. According to one of the realtors involved with the pending sale of the property, the chain link encroachments were addressed and relocated within the subject property by the original fencing contractor.

Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 6  
DECEMBER 14, 2000

The Planning Department acknowledges there may be other design or building alternatives available to the applicant and owners recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant and current owners when a more reasonable alternative is available by the granting of the subject variance request.

#### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines.

The existing dwelling and open carport were constructed under a series of building permits issued to the previous owner(s). It appears that the building inspections of the premises, during building construction and throughout the life of three (3) building permits did not disclose any building setback irregularities. The applicant and current owners became aware of the encroachment problems during escrow to sell the property. The current owners are trying to resolve building encroachment problems that were disclosed after a modern survey map was presented for escrow purposes.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within both side yards on a non-conforming sized property.

The existing building encroachments are not physically and visually obtrusive from adjacent property or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears the existing building (dwelling) encroachments on the property and within the affected side yards were the result of mapping and building discrepancies or misinterpretation of the minimum yards during building construction by the previous owner(s). Inspection of the property during the life of the building permits issued by the County or other agencies did not discover any building encroachment or disclose any irregular building setback problems. Therefore, it is felt that the existing dwelling encroachments will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by certified letter dated August 31, 1999. Additional time to allow the applicant to address the concerns of the surrounding property owners, remove the encroachments within the public rights-of-way and review past building permits was required.

Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 7  
December 14, 2000

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.

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, 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 existing dwelling/open carport and attendant roof eave will not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing building improvements identified on the site plan submitted with the variance application, dated August 6, 2000 to remain on the subject property. The applicant/owner(s) is/are required to confer with the Department of Public Works (DPW) and secure any building permit to allow or affirm the existing open carport improvements and encroachments.
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Keith T. Iwamoto  
CENTURY 21 HOMEFINDERS  
Page 8  
December 14, 2000

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/CJY:cps  
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xc: Real Property Tax Office  
R.K. Wallace