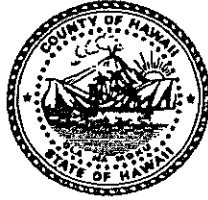


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy 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 0998

February 13, 2001

Mr. Brian Nishimura  
Planning Consultant  
101 Aupuni Street, Suite No. 217  
Hilo, HI 96720

Dear Mr. Nishimura:

**VARIANCE PERMIT NO. 1186 (VAR 00-091)**

**Applicant: BRIAN T. NISHIMURA**

**Owner: EARL R. CANNOLES SR., TRUST**

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

**Tax Map Key: 2-4-066:069**

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. 1186 allows portions of an existing dwelling to remain upon the subject property, "AS BUILT", with a minimum front yard of 13.50 front feet and corresponding 9 feet open space from the affected front property line and a minimum 3.75 feet open space from the in the affected side property line, in lieu of the minimum 20 feet front yard and 14 feet open space and 4 feet open space requirements, as required by the Zoning Code, Chapter 25, Article 5, Division 3, Section 25-5-36, Minimum yards, (1), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

#### FINDINGS AND RECOMMENDATION

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

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 10, 665 square feet, is Lot 69-A-2-P, Being a Portion of Land Court Application 1205, Maps 23 and 24, Kukuau 1<sup>st</sup>, South Hilo, Hawaii. The property's address is 1019 Kumukoa Street.

The property is zoned Multiple-Family Residential (RM-4) by the County.

2. The applicant's representative submitted a detailed written explanation, with the variance application which states in part:

"The existing single family dwelling was constructed in 1986 (Building Permit No. 861005). While the dwelling was under construction two additional building permits were obtained (permit nos. 861693 and 861948) for a swimming pool and lanai addition. Earl, Sr. and Gloria Cannoles were the owner/builders of the dwelling. All three of the building permits remain open and have not received final inspection.

Mr. Earl Cannoles, Sr. passed away earlier this year. His son, Earl Jr. is the executor of his father's estate and is in the process of selling the subject property held by the Earl Cannoles, Sr. Trust.

Errors in siting the improvements occurred during the construction of the dwelling. A recent survey of the subject property by The Independent Hawaii Surveyors found that, "The residence projects 6.27 feet into the front County Zoning Code building 20-foot setback; the roof projects 4.04 feet into the side setback (4.00 feet allowed) and 10.92 feet into the front yard setback (6.00 feet allowed)." (sic) (Please see the attached survey map showing existing conditions and survey report.)"

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

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4. The site plan drawing, drawn to scale, by The Independent Hawaii Surveyors, dated October 17, 2000, identify the location of the existing dwelling and other related dwelling improvement. Furthermore, the site plan denotes the distances between the respective dwelling and affected front and side boundary lines. The site plan denotes the location and distances between the affected portion of the dwelling's eaves and the affected boundary lines.
5. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated October 18, 2000 stating:

"This is to certify that the property taxes on the parcel listed above owned by Earl R. Cannoles, Sr. Trust have been paid through the period ending December 31, 2000.

This clearance was issued by parcel(s) only and is for the purposes of Planning Department. This request was made by Brian Nishimura."

6. To date, no response or comment(s) to the Planning Department's memorandum dated November 23, 2000 was received from the Real Property Tax Office.
7. The State Department of Health (DOH) memorandum dated December 5, 2000 in the subject variance file states:

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

8. The Department of Public Works (DPW) memorandum dated December 19, 2000, states in part:

"We have reviewed the subject application forwarded by your memo dated November 23, 2000 and oppose the approval of the application for the reason noted below.

Building permits 861005, 861693, & 861948 for the subject property were never finalized. Please refer questions regarding building permits to the Building Division at 961-8331."

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Note: It appears three (3) building permits (B.P. Nos.861005, 861693, and 861948) were issued to the owner (deceased) to construct the existing dwelling and related building improvements on the subject TMK property. Copies of these building permit(s) were obtained from the DPW-Building Division and included in the variance file for the record.

9. Proof of mailing a first and second notice was submitted on December 7, 2000. For the record the first and second notice was mailed on November 2, 2000 and December 1, 2000, respectively by the applicant.

For the record a copy of letter to the applicant from Day-Lum Rentals, dated November 24, 2000 and a copy of the applicant's response letter, dated December 1, 2000 was received on December 7, 2000. No other oral or written comments from the surrounding property owners or public concerning the subject application were received.

The building and roof encroachment problems were discovered during estate purposes and sale of the subject property. The applicant submitted a recent survey map/site plan that identifies the location of the existing dwelling improvements. The site plan identifies the distance between portions of the dwelling and roof eaves from the affected front and side boundary lines. Portions of the existing dwelling and attendant roof eaves were constructed and encroach into the property's respective front and side yards.

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 applicant/owner (deceased) 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 and relocating the dwelling's affected roof eaves 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 would disrupt the dwelling's building geometry and affect the dwelling's structural integrity.

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The applicant, on behalf of the current owner (trust), is honestly trying to resolve building encroachments that were established on the property by the owner's father (deceased). No evidence has been found to show indifference or premeditation by the previous owner to deliberately create or intentionally allow the building encroachment problems to occur.

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 owner (trust) 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 Cannoles Sr. 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 owner's son/trust became aware of the encroachment problems during estate planning and possible decision to sell the property. The applicant is trying to resolve building encroachment problems that were disclosed after a modern survey map was conducted for estate purposes and disposition of the property.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within the front and side yard are approximately 14 years old.

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 front and 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 within the affected yards will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by certified letter dated November 23, 2000. Additional time to allow the applicant to address the concerns of the surrounding property owners and secure and review copies of the building permits was required.

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.

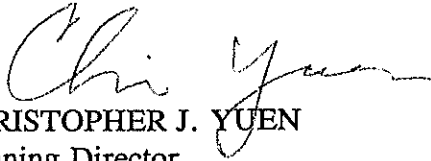
This variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/current 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 existing dwelling and attendant roof eave will not meet Chapter 25, the Zoning Code's, minimum front and corresponding permitted projections into yards and open space requirements. The approval of this variance allows the existing building improvements, "AS BUILT" and identified on the site plan submitted with the variance application, dated October 17, 2000, to remain on the subject property. The applicant/current owner(s)/trust, successors or assigns are required to confer with the Department of Public Works (DPW) and close the outstanding building permits ( BP Nos. 861005, 861693, and 861948) before title is transferred or the property is sold.
3. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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:cps  
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xc: Real Property Tax Office