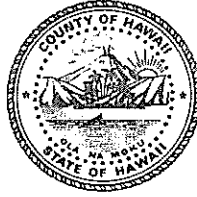


Harry Kim  
Mayor



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

September 17, 2002

Mr. and Mrs. Roy Kobayashi  
210 Edita Street  
Hilo, HI 96720

Dear Mr. and Mrs. Kobayashi:

**VARIANCE PERMIT NO. 1310 (VAR 01-081)**

**Applicants: ROY KOBAYASHI, ET AL.**

**Owners: ROY KOBAYASHI, ET AL.**

**Request: Variance from Minimum Yards,  
Pursuant to Chapter 25, Zoning**

**Tax Map Key: 2-5-061:027, Lot 27**

After reviewing your application, site plan, and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1310 allows portions of a dwelling on the subject TMK property to remain, "AS BUILT" according to the variance application's site plan. Portions of the dwelling have a 15.0 feet to 19.5 feet side yard in lieu of the minimum 20 feet side yard required. The variance request is from the property's minimum side yard and the corresponding minimum side yard open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

### **BACKGROUND AND FINDINGS**

1. **Property Description and Location.** The subject property is Lot 27, containing 43,585 square feet and located within Increment 1-A of the Pacific Plantation Subdivision, File Plan No. 1927, and is situated at Kukuau 2<sup>nd</sup>., South Hilo Hawaii. The property's address is 210 Edita Street.

The property is zoned Agricultural (A-10a) by the County and designated Agriculture "A" by Land Use Commission (LUC).

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2. **Variance Application/Applicant's Explanation-Request.** The applicants/owners submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee.
  
3. **Variance Application-Site Plan.** The applicant's map or "AS-BUILT" site plan drawing, drawn to scale, is an extract of an approved site plan previously reviewed by the Planning Department. This site plan denotes the location of the "EXISTING RESIDENCE" (dwelling), "AS BUILT", as of the variance submittal date. The applicants discovered that portions of the dwelling (living area) encroach into a side yard. The applicants have disclosed the encroachments to be between 6" to 12" on their site plan submittal. The approved site plan does not identify the building line or building setback line or define the area where buildings or structures may not be built. A small "living area" of the "EXISTING RESIDENCE" was constructed into the affected side yard by previous owner(s).

The site plan denotes the location of the existing cesspool on the subject TMK property.

The applicants/current owners wish to address the encroachment issues prior to offering the property for sale or making any change in title.

5. **Agency Comments and Requirements (VAR 01-081).**

- a. The applicants submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated September 27, 2001 states in part:

"TMK(s): (3) 2-5-061-027"

"This is to certify that he (sic) Roy J/Claudia A Kobayashi (owner-of-record) have paid their real property taxes for the tax period as indicated below. Therefore, there are no taxes owing the County of Hawaii for the above-referenced parcel **Effective till December 31, 2001.**

This Real Property Tax Clearance was requested on behalf (sic) Kobayashi, Claudia for the County Planning Department and is issued for this/these parcel(s) only."

The Department of Finance-Real Property Tax Office memorandum dated December 6, 2001 states in part the following:

“Comments from the Appraisal Section:

There are no comments at this time”

“Comments from the collection section:

Real Property taxes are paid through December 31, 2001.”

- b. The State Department of Health (DOH) memorandum dated December 13, 2001, states in part:

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

- c. The Department of Public Works (DPW) memorandum dated December 17, 2001 states in part:

“We have reviewed the subject application forwarded by your memo dated December 4, 2001 and oppose the approval of the application for the reasons noted below.

Building permits 940656 & 970441 and electrical permit E970597 for the subject dwelling were never finalized. Please refer questions regarding the permits to the Building Division at phone number 961-8331.”

6. **Notice to Surrounding Property Owners.** It appears that the applicant’s originally relied on a third party to send notice(s) to the surrounding property owners and recently became aware of the third party’s failure to mail the required notice(s). A notice was recently mailed to the surrounding property owners within 500 feet of the subject TMK property. Proof of mailing a notice was submitted to the Planning Department on September 11, 2002 by the owner’s representative-William L. Moore Planning.
7. **Comments from Surrounding Property Owners or Public.** No further agency comments were received. No objections to the variance request and recent notice were received or filed by the surrounding property owners or public.

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant's, the "EXISTING DWELLING" was constructed in 1991. Portions of the dwelling constructed in 1991 encroach into the property's "Hamakua" side yard. The current applicants/owners purchased the home in 1995 "as-is" and recently decided to address the 1991 dwelling encroachment and building setback issues.

Therefore, considering the applicant's request, variance background information, and other circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicants/owners 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 applicants/owners. Alternatives available to the applicants/owners to address and correct the existing building encroachments include the following actions:

1. Remove the 1991 building encroachments with the affected side yard.
2. Redesign and relocate the dwelling, garage, and other improvements to fit within the correct building envelope prescribed by the Zoning Code and/or other design and remedial building alternatives.
3. Consolidate the subject TMK property (Lot 27) with the adjoining TMK property (Lot 28) and resubdivide the resultant "consolidated bulk lot" back into 2 "lots" modifying property geometry and/or change the common side boundary line and property metes and bounds descriptions, respectively, to accommodate existing structure position(s) meeting the minimum yard requirements of the Zoning Code.

To require or impose removal of these 1991 encroachments or modification of the existing dwelling improvements would seem unreasonably harsh and uneconomical at this time. The removal of the dwelling encroachments would disrupt the dwelling's living area, may affect the structural integrity of the dwelling, and disrupt the existing building orientation.

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The option to acquire and consolidate a portion Lot 27 with adjoining Lot 28 and resubdivide pursuant to Chapter 23, Subdivisions, was not considered by the applicants. The applicants are addressing the dwelling's present position with respect to the affected boundary line at the time of purchase and honestly trying to resolve the encroachment problem or issues created by the previous builder or owner(s). No evidence was presented or found to show indifference or premeditation by the past owner(s) or current owners to deliberately allow the building encroachments to occur and built beyond the building line or the building envelope prescribed by the Zoning Code.

The Planning Department acknowledges there may be other design or building alternatives available to the applicants/owners beyond those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the 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 circulation and exposure to light are available between existing or permitted structure(s) and boundary/property lines.

The existing building encroachment within the side yard is not physically and visually obtrusive from adjacent property or perceptible from the nearest street or the right-of-way. It appears that the recent building improvements will not depreciate or change the surrounding residential uses and semi-pastoral feeling of the area. It is felt the dwelling's position established in 1991 will not depreciate or change the character of the surrounding neighborhood and surrounding land patterns. Inspections of the property by the DPW issued in 1991 by the DPW-Building Division or other agencies did not discover any building encroachment problem(s) or disclose any irregular building or unusual building setback problems or building encroachment issues. Therefore, it is felt that the dwelling or "EXISTING RESIDENCE" and attached garage improvements, "AS-BUILT" location, will not detract or change the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated December 4, 2001. Additional time to allow the applicant's to confer with their agent or representative and address variance procedure was necessary. The applicants/owners agreed to an extension of time to September 30, 2002 to render a decision on the subject variance request.

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.

**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicants, owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants, owners, 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 an existing dwelling encroach into one of Lot 27's side yards. The approval of this variance acknowledges the original "EXISTING RESIDENCE" location constructed and established on the property on or about 1991-1995, "AS BUILT", according to the variance application's site plan submittal received on October 23, 2001 in the subject variance permit file.
4. The applicants or current owner(s) shall contact the DPW-Building Division to address any outstanding building permits issued to the property or secure any building permits to allow existing building improvements identified on the variance application's revised site plan submitted with the variance application on October 23, 2001. The following and outstanding building permits: 940656 & 970441, and electrical permit -E970597 issued to the subject TMK property and any further building permits or construction permits issued to the subject TMK property shall be "finaled" or closed by the DPW-Building Division prior to any further change in property title or sale of the TMK property.
5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building setbacks, 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 - Hilo  
Planning Dept. - Kona