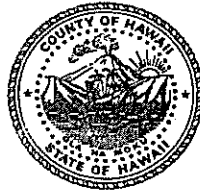


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

April 14, 2004

Ms. Catalina Perez  
1209 A Kaumana Drive  
Hilo, HI 96720

Dear Ms. Perez:

**VARIANCE PERMIT NO. 1424 (VAR 04-002)**

**Applicant: CATALINA PEREZ**

**Owner: CATALINA PEREZ**

**Request: Variance from Minimum Yards,  
Chapter 25, the Zoning Code**

**Tax Map Key: 2-5-027:043, Lot 2**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1424 allows dwelling and roof eave encroachments located on the subject TMK property, Lot 2, "AS-BUILT", with a minimum 16.9 feet to 18.9 feet front yard and attendant minimum 13.4 feet to 13.8 feet front yard open space, respectively, according to the applicant's variance site plan map submittal dated November 26, 2003. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property, Lot 2 containing 18,001 square feet, is within Onohiaina Subdivision, and situated at Ponahawai, South Hilo, Hawaii.

The subject TMK property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the State Land Use Commission.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department between December 9, and December 29, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated November 26, 2003.

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The variance application's site plan or survey map by Paul H. Murray and Associates, LLC denotes the building envelope, dwelling position and other site improvements on "LOT 2".

3. **Agency Comments and Requirements- (VAR 04-002):**

- a. The State Department of Health (DOH) memorandum dated January 23, 2004 states:

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

- b. The Department of Public Works (DPW) memorandum dated January 29, 2004, states:

"We have reviewed the subject application forwarded by your memo dated January 7, 2004 and have no comments or objections to the request."

4. **Notice to Surrounding Property Owners.** Proof of mailing notice(s) to surrounding property owners was submitted to the Planning Department. For the record, the first and second notice(s) were mailed on December 19, 2003 and January 15, 2004, respectively, by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated November 26, 2003. The applicant/owner filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the "DWELLING" improvements, "AS BUILT", on "LOT 2". Portions of a dwelling were constructed beyond the lot's building lines or building envelope into Lot 2's minimum front yard and front yard clear space requirements pursuant to the Hawaii County Zoning Code. The applicant became aware of the dwelling encroachment issues after the sale of the property or survey map was prepared. No evidence has been found to show indifference or

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premeditation by the past builders or the applicant/current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 2 were constructed approximately 15 + years ago according to the applicant's background and County building permit(s) records. It appears that building inspections of the premises between 1989 and 1993 by the agencies during construction of the building improvements did not disclose any building encroachment issues or building setback irregularities at that time.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Removing the existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the subject TMK property (Lot 2) with the public R-O-W (Kaumana Drive) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

### **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 permitted structure(s)/uses and boundary/property lines.

It appears that the dwelling encroachments constructed nearly 15 + years ago within the front and minimum front yard and attendant front yard open spaces are not physically noticeable or visually obtrusive from adjacent property(s) or the public right-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. Therefore, it is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated January 7, 2004. Additional time to consider property topography and agency comments was deemed necessary. The

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applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than April 15, 2004.

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 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. Portions of a "DWELLING" located on "LOT 2" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated November 26, 2003. The approval of this variance allows those dwelling improvements including roof eaves within "LOT 2" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 2".
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses on the subject tax map key property are 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,

A handwritten signature in cursive script that reads "Chris Yuen".

CHRISTOPHER J. YUEN  
Planning Director

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xc: Real Property Tax - Hilo  
Planning Department - Kona