

00 92-287

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

August 18, 2004

Ms. Marta Birchard  
1478 Waianuenue Avenue  
Hilo, HI 96720

Dear Ms. Birchard:

**VARIANCE PERMIT NO. 1466 (VAR 04-043)**  
**Applicant: MARTA BIRCHARD**  
**Owner: MARTA BIRCHARD**  
**Request: Variance from Minimum Yards**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 2-3-028:005, Lot 20-B**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1466 allows the dwelling improvements ("HOUSE"/"CARPORT"/"ROOF EAVES") to remain on subject TMK property (Lot 20-B), "AS BUILT", with a minimum 11.10 feet front yard and attendant 11.10 feet front yard open space, respectively, according to the applicant's variance site plan map and other plan submittals dated January 6, 2004. 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) (2) (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 property, Lot 20-B containing 15,847 square feet, formerly being a portion of Grant 9147 to Joseph de Mello and Grant 10827 to Masao and Florence Kubo, is situated at Piihonua House Lots, Second Series, Piihonua, South Hilo, Hawaii.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about March 12, 2004. The variance application site plan map drawing is drawn to scale and was prepared by The Independent Hawaii Surveyors. The variance site plan map denotes the location of the dwelling, carport, and roof eave encroachments, "AS-BUILT" into the minimum yards and attendant open yard or clear space requirements of Lot 20-B.

The applicant's background states in part:

"First, please let me say that the seller was unaware of this situation because when he purchased the home in 1990, he had no problems with the purchase nor did he have any information regarding a setback violation. The violation came to light when a new survey report and map were drawn up for the purpose of selling the property."

**Note:** The subject TMK property (Lot 20-B) was created on June 16, 1980 (SUB 4483). The variance site plan map prepared by the The Independent Hawaii Surveyors, dated January 6, 2004. The variance site plan map dated January 6, 2004 does not denote or identify a 5 feet wide future road widening setback line on Lot 20-B to be taken from the property's front boundary line along Piikea Street and 10 feet wide "Planting Screen Easement" on Lot 20-B to be taken from the front boundary line along Waianuenue Avenue. In view of the property's final subdivision plat map, building improvements constructed after June 16, 1980, on Lot 20-B, are subject to a minimum 25 feet front yard and attendant minimum 19 feet front yard open space requirements from Lot 20-B's front boundary line along Piikea Street.

In addition, the cesspool denoted on the final subdivision plat map is not identified on the variance site plan map.

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3. **Agency Comments and Requirements-(VAR 04-043):**

- a. The Department of Public Works (DPW) memorandum dated April 28, 2004, states in part:

“We reviewed the subject application forwarded by your memo dated April 13, 2004 and oppose the approval of the application for the reasons noted below.

Building permit #871942 for the subject dwelling has no status of inspection.”

- b. The State Department of Health (DOH) memorandum dated May 11, 2004 states:

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

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on March 16, 2004 and April 22, 2004, respectively, by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following support letter and comments regarding the development-subdivision or TMK was received:

- a. Letter supporting applicant’s variance and comments received on or about May 19, 2004 from Marguerite Ferreira.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment problems were discovered after the dwelling and carport were built or during escrow. The applicant or current owner is trying to resolve the building encroachment issues. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, “AS BUILT” on “Lot 20-B”.

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The site plan identifies the dwelling and attached carport position together with other building issues within the property's minimum yards and attendant open yard requirements pursuant to the Hawaii County Zoning Code. The applicant or current owner recently became aware of building encroachment issues and no evidence has been found to show indifference or premeditation by the previous owners to deliberately create or intentionally allow the dwelling and attached carport encroachments to be constructed within the affected front yard and attendant front yard open space requirements. The dwelling and carport improvements were constructed under valid building permit(s) and other construction permits issued by the County to previous owners or builders; and initial inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

### **ALTERNATIVES**

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

1. Remove the building encroachments or redesigning or relocating the dwelling and carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 20-B with adjoining right-of-way and resubdivision to modify property lines and adjust 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 and carport encroachments into the minimum yards are not physically and visually obtrusive from adjacent property(s) or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the existing dwelling encroachments within the yards identified on the variance application 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 April 13, 2004 and additional time to consider previous subdivision records and agency comments was necessary.

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The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than August 30, 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:

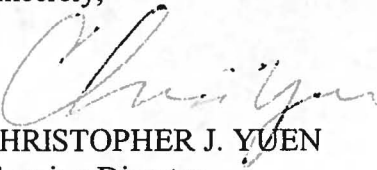
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 and carport on the subject TMK property or Lot 20-B do not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. In view of final subdivision plan map (SUB 4483) dated June 16, 1980 and the variance site plan map, the dwelling and carport encroachments are permitted to remain, "AS BUILT", on the subject TMK property (Lot 20-B).
4. The applicant or current owner shall confer with the DPW-Building Division in Hilo to address the outstanding building permit (#871942). Any building permits or construction permits issued to the subject TMK property (Lot 20-B) shall be closed or "finaled" by the DPW-Building Division prior to further any change in title or sale of the property.

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5. Future building improvements and permitted uses on Lot 20-B are subject to future width lines denoted on final subdivision plat map (SUB 4483) dated June 16, 1980 and State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

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xc: Real Property Tax Office - Hilo  
Planning Dept. - Kona  
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