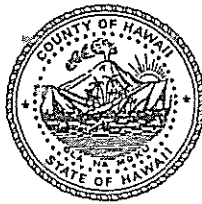


Harry Kim  
Mayor



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

December 15, 2004

Ms. Sheryl Fletcher  
RR2 Box 4061  
Pahoa, HI 96778

Dear Ms. Fletcher:

**VARIANCE PERMIT NO. 1493 (VAR 04-078)**

**Applicant: SHERYL FLETCHER**

**Owners: MARY QUIJANO**

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

**Tax Map Key: 1-5-090:023, Lot 1496**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. \_\_\_\_\_ allows the dwelling "DWELLING" encroachments on subject TMK property (LOT 1496), to remain, "AS-BUILT", with a minimum 7.8 feet side yard and attendant minimum 4.6 feet side yard open space in lieu of the minimum 10.0 feet side yard and attendant minimum 5.0 side yard open space requirements, respectively, according to the variance site plan map dated April 4, 2004. The variance request is from subject TMK's minimum side yard and minimum side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations, and 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 1496 containing 12,040 square feet, is within Hawaiian Shores Subdivision, and situated at Keahialaka, Puna, Hawaii. According to the applicant, the TMK property's address is 15-2784 Ono Street, Pahoa, HI 96778.

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The property is zoned Agricultural (A-1a) 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 on or about March 11, 2004. The variance application's site plan map, dated April 4, 2004, was prepared by The Independent Hawaii Surveyors and drawn to scale. The map denotes the location of the dwelling, "AS-BUILT", into a side yard and attendant side yard open yard or clear space requirements.

The applicant's background states in part:

"The new owner wants to make the existing structure legal. It is impossible to move the house to comply with the minimum set back so she would like to obtain a variance. This is the first owner to request a survey so it is only now that this problem has been identified. The new owner inherited this problem and will have trouble obtaining financing or selling this house without a variance.

Neither of the two previous owners stated that they were aware of this problem or that they had complaints from their neighbor on the side yard boundary that has this setback discrepancy. Neither the 2.4 ft building encroachment or the 6-inch eave projection will affect the neighbor. The majority of the setback is free of structures or projections."

3. **Agency Comments and Requirements-(VAR 04-078):**

- a. The Department of Public Works (DPW) memorandum, dated October 4, 2004, states:

"We have reviewed the subject application forwarded by your memo dated September 15, 2004 and have no objections to the request."

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

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

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4. **Notice to Surrounding Property Owners.** According to the applicant's submittals, it appears that the applicant mailed first and second notice(s) on or about July 21, 2004/August 21, 2004/September 1, 2004 and October 8, 2004, respectively.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written objections from the surrounding property owners or public were received.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The encroachment issues were discovered after the survey map dated April 4, 2004 was completed or reviewed during escrow. The applicant, on behalf of the current owners, 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, detached water tanks, and other site improvements, "AS BUILT" on "LOT 1496". The variance site plan map shows that a portion of the dwelling was constructed within a minimum 10 feet side and attendant minimum 5.0 feet side yard open space requirements pursuant to the Hawaii County Zoning Code.

No evidence was found showing indifference or premeditation by the applicant or previous builders or owner(s) to deliberately create or intentionally allow the dwelling to be built within the minimum yards and attendant minimum open yard space requirements of the Zoning Code. It appears that the dwelling and other site improvements were built under valid building permit(s) and other construction permits issued by the County; and, inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

#### **ALTERNATIVES**

Alternatives available to the applicant or current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove the dwelling encroachments or relocate the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 1496 with adjoining lot (Lot 1498) and resubdivision of the resulting consolidated property to modify affected property lines and adjust minimum yards for the dwelling.

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### **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 into affected side yard are not physically or visually obtrusive from adjoining property (Lot 1498) or right-of-way. The portion of the dwelling within the side yard was built before the survey map was completed and presented during escrow to sell the property. It appears the 15 + year old dwelling encroachments within the affected side yard were caused by mistakes by the previous owner(s) or builders in 1989 or early 1990s. The dwelling encroachment issues were not detected until a modern survey was completed during 2004 and presented during escrow. It is felt that these 15 + year old building encroachments within the respective yards and open space requirements have not affected or altered the character of the subdivision and surrounding land patterns. Therefore, it is felt that the dwelling encroachments within the affected yards will not detract from the character of the immediate neighborhood or subdivision.

The subject variance application was acknowledged by letter dated September 15, 2004. The applicant agreed to an extension of time to render a decision on subject variance to December 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:

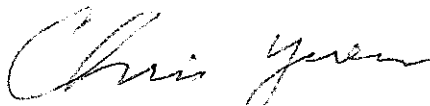
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 on the subject TMK property or Lot 1496 will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum open space requirements according to the variance site plan map. The approval of this variance allows dwelling encroachments and building positions identified on the variance site plan map dated April 4, 2004 to remain, "AS BUILT", on the subject TMK property (LOT 1496).
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 1496), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses shall be subject to 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

WRY:cd

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