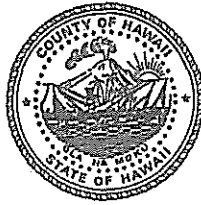


Harry Kim
Mayor



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

July 26, 2005

IMATA & ASSOCIATES, INC.
171 Kapiolani Street
Hilo, HI 96720

Gentlemen:

VARIANCE PERMIT NO. 05-035 (VAR 05-035)
Applicant: IMATA & ASSOCIATES, INC.
Owner: WILLIAM R. HIGA TRUST
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 2-3-048:033, Lot 33

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 04-093 allows portions of a dwelling/lanai to remain, "AS-BUILT", or building encroachments with a minimum 3.56 feet side yard and attendant 1.51 feet side yard open yard space, in lieu of the minimum 8.0 feet side yard and 4.00 feet side yard open space requirements, according to a recent survey and variance site plan map submitted with the variance application. The variance is from the TMK property's minimum side yard and attendant side yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(B), 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 33 containing 10,012 square feet, is within "Komohana Heights", being a portion of R. P. 5706, I. C. Award 8521-B, Apana 2 to G. D. Hueu, situated at Kukuau 2nd, South Hilo, Hawaii. The property's street address is 415 Huali Place.

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The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the State of Hawaii-Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about April 13, 2005. The applicant's variance application site plan or map drawing is drawn to scale. The variance application's site plan or survey map by Imata & Associates, Inc. denotes the building site area (building envelope), and the building or Dwelling/Lanai position and other site improvements on "LOT 33 10,012 Sq. Ft."

Note: The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for the dwelling improvements on "LOT 33". The location of any perimeter "C.R.M. Wall" or any wall improvements on or along shared property lines shall be addressed and resolved between respective owner(s).

3. **Agency Comments and Requirements-(VAR 05-035):**
 - a. The State Department of Health (DOH) memorandum dated June 22, 2005, 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 on July 7, 2005. These submittals show the first notice and second notice was mailed on May 25, 2005 and June 15, 2005, respectively, according to submittals received.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified according to "Survey conducted on March 2, 2005" and variance application's site plan map. The applicant, on behalf of the current owner, filed the variance request and application to address or resolve building encroachment issues.

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The site plan map was prepared by a surveyor and shows the dwelling/lanai and other site improvements, "AS BUILT", upon "LOT 33". Portions of the dwelling/lanai are constructed beyond the denoted building setback lines or outside the building envelope into a minimum side yard and associated minimum side yard open space pursuant to the Hawaii County Zoning Code. The current owner became aware of the building encroachment issues after the survey was conducted or map prepared. No evidence has been found to show indifference or premeditation by the current owner or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements and lanai addition were built between 1975 and 1982 on Lot 33 according to the applicant's background information. It appears that building inspections of the premises by the respective agencies during the 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 adjoining property-Lot 32 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 on or about 1975 and 1982 within the affected yards are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these 23 + year old dwelling/lanai 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.

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The subject variance application was acknowledged by letter dated June 3, 2005. The applicant requested additional time to submit proof of mailing required notices to surrounding property owners and agreed to extension of time to render a decision on the subject variance.

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/Lanai" located on "LOT 33" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to a survey conducted on March 2, 2005 and survey map submitted with variance application. The approval of this variance allows those dwelling/lanai improvements including roof eaves within the minimum side yard and minimum associated side yard open spaces to remain, "AS BUILT", on the subject TMK property or "LOT 33".
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 (LOT 33), 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,



CHRISTOPHER J. YUEN
Planning Director

WRY: je

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xc: Real Property Tax - Hilo
Planning Department – Kona