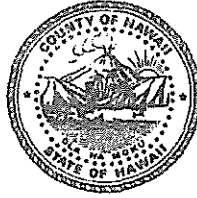


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

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

May 12, 2006

Mr. Earl Watanabe  
HCR-2 Box 6843  
Keaau, HI 86749

Dear Mr. Watanabe:

**SUBJECT: VARIANCE PERMIT-VAR 06-027**  
**Applicant: EARL WATANABE**  
**Owner: TEIJI KATAGIRI**  
**Request: Variance from Chapter 25, Zoning,**  
**Minimum Yards**  
**Tax Map Key: 1-6-091:003, Lot 38**

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 06-027 subject to variance conditions. The variance permits portions of a dwelling/eaves to remain on Lot 38, "AS-BUILT", with a minimum 16 feet front yard and allow attendant minimum 13 feet front yard open space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard open space requirements according to the variance site plan submitted by the applicant. The variance is from the TMK property's minimum front yard and attendant minimum front yard open yard space pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77 Other regulations, 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 38 containing 12,000 square feet, is within Ainaloa Subdivision, Land Court Application 1053, Map 70, Block 63, and situated at Keaau, Puna, Hawaii. The property's street address is 16-2279 Ainaloa Drive.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" 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 17, 2006. The variance application's site plan is by prepared by Earl Watanabe & Associates and drawn to scale. The variance site plan map denotes portions of the "Dwelling/Carport" were built within the property's minimum 20 feet front yard of subject TMK property.

The applicant's background states in part:

"In lieu of the required set-back of 20 ft. on the frontage facing Ainaloa Drive only, we request a variance to 16 ft. of a residence that was built in 1995.

As the home was built about 10 years ago we do not have a (sic) explanation at this time as to why the set-back of the home was done incorrectly."

**Note:** The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS).

3. **County Building Records:**

County building records show 1-Building Permit (950506), 1-Electrical Permit (E950541), and 1-Mechanical (M950440) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and related site improvements on subject TMK property were constructed pursuant to the building permit and associated construction permits issued in 1995.

4. **Agency Comments and Requirements-VAR 06-027:**

- a. The Department of Public Works (DPW) memorandum dated April 21, 2006 states in part:

"NO COMMENTS"

- b. The State Department of Health (DOH) memorandum dated May 1, 2006 states:

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

- 5     **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on March 20, 2006 and April 13, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 12, 2006.
6.     **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

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

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum 20 feet front yard. The variance application's site plan was prepared by the applicant and denotes the location of the Dwelling and other site improvements on "PARCEL 03". It appears the applicant or current owner became aware of dwelling's position on subject TMK property. No evidence has been found to show indifference or premeditation by the owner or builders to deliberately create or intentionally allow these building encroachments to be built within the property's front yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 1-building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements circa 1995, the dwelling encroachment within the property's minimum 20 feet front yard went unnoticed.

#### **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 to fit within the correct building envelope prescribed by the Zoning Code.
2.     Consolidation of Lot 38 with a portion of the Right-of-Way (Ainaloa Drive) fronting the property and resubdivision to modify property lines or adjust minimum yards.

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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 subject building encroachments constructed approximately 10 years ago within the minimum front yard are not physically and/or visually obtrusive from the adjacent property(s) or right-of-way (Ainaloa Drive). It appears that the dwelling encroachments into the property's minimum front yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the dwelling encroachment into the property's minimum 20 feet front yard will not detract from the character of the immediate neighborhood or the subdivision.

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 the 3-BR-Dwelling/Carport constructed on subject TMK property or Lot 38 will not meet the property's minimum 20 feet front yard requirement pursuant to Chapter 25, the Zoning Code, according to the applicant's site plan submitted with the variance application. The approval of this variance permits the Dwelling/Carport improvements to remain on subject TMK property or "PARCEL 03", "AS BUILT", according to the variance site plan.

Mr. Earl Watanabe

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4. Future or new 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:mad

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xc: Real Property Tax Office-Hilo