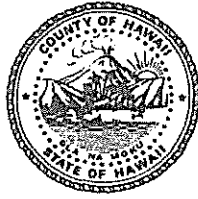


Harry Kim  
Mayor



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

December 21, 2006

Mr. George and Mrs. Pamela Chinen  
726 Kaulele Place  
Hilo, HI 96720

Dear Mr. and Mrs. Chinen:

**VARIANCE PERMIT-VAR 06-047**  
**(Existing Dwelling-Dwelling Addition-APPROVAL)**  
**(Proposed Addition-DENIAL)**  
**Applicants: GEORGE CHINEN, ET AL.**  
**Owners: GEORGE CHINEN, ET AL.**  
**Request: Variance from Chapter 25, Zoning**  
**Minimum yards**  
**Tax Map Key: 2-3-050:047, Lot 4**

After reviewing your application, the Planning Director **approves** Variance Permit-VAR 06-047 to allow existing dwelling improvements and permitted addition (currently being constructed pursuant to B2006-0260H) to remain on Lot 4, "AS-BUILT", subject to variance conditions. The approved variance allows previously constructed dwelling improvements to remain with a 6.00 feet (west/mauka) side yard and attendant minimum 3.00 feet open yard space and a recent addition being constructed into the north and makai side yards to remain with a minimum 9.0 feet (north/makai) side yards and attendant minimum 3.0 feet side yard open space(s) between the "roof eave line" and respective side boundary line(s) according to the applicant's variance site plan map. The variance is from the TMK property's minimum 10.00 side yard(s) and attendant minimum 5.00 feet side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

The Planning Director **denies** a variance request to permit construction of further addition(s) to the existing dwelling (along the westerly side boundary line) with a minimum 6.0 feet side yard and minimum 3.0 feet side yard near the (west) boundary line.

## **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 4 containing 10,427 square feet, is part Sunrise Ridge Subdivision, Unit 2-B, F. P. 1693, and situated at Kukuau 2<sup>nd</sup>, South Hilo, Hawaii. The TMK property' street address is 726 Kaulele Place.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "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 June 9, 2006. The variance application's site plan map is drawn to scale and prepared by Accent Design Services. The variance site plan map is dated "JULY 2005" and denotes the existing and proposed distances between the dwelling additions and affected the north and west boundary lines of the subject TMK property.

The applicant's background report states in part:

"We would like to request a variance for our personal residence to allow us to enclose our current master bedroom patio. Since our father's recent hip surgery, we will need to continue to provide care for him at our residence. Our plans are to extend the house to provide a living space for our father. Because of our extension, our den will turn into a hallway leading to our father's living are. As a result, we would like to request to enclose our master bedroom patio to provide needed space that will be lost as a result of the extension plans. We are also expecting our third child and so the baby supplies and clothing that would normally be in the den can be stored in our master bedroom's added space."

**Note:** The subject TMK property is connected to the County sewer. The variance request and variance site plan map does not address the location or position of any perimeter walls or fencing, and landscaping, etc. on the subject property or along the common boundary lines.

3. **County Building Records:**

County building records show 3-Building Permits (981392, 990358, B2006-0260H), 2-Electrical Permits (E990261, E990337), and 2-Mechanical (M981074, M990247) or Plumbing Permits were issued to subject TMK property. A recent Building Permit (B2006-0260H) to enlarge the living area of the original dwelling was issued by the County-DPW on or about January 25, 2006.

4 **Agency Comments and Requirements-VAR 06-047:**

- a. The State Department of Health (DOH) memorandum dated June 27, 2006 states:

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

- b. The Department of Public Works (DPW) memorandum dated July 5, 2006 states in part:

"We have reviewed the subject application forwarded by your memo dated June 16, 2006 and have the following comments.

Approval of the application shall be conditioned as noted below.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial; structures-5 ft. side and 5 ft. rear.

Overhangs may project a maximum of 2 feet from the property line with 1-hour fire resistive construction. Overhangs that are 3 feet from the property line may be or any construction allowed by the code."

- 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 June 9, 2006 and July 18, 2006, respectively, by the applicants. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 26, 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**

It appears that the original dwelling's living area was built pursuant to building permits and other associated construction permits issued to subject TMK property. The original dwelling/garage/solar panel installation was built pursuant to building and associated construction permits issued between 1998 and 1999. According to the applicants/owners, the recent addition (being constructed pursuant to B2006-0260H) was required for family or older family member(s).

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The variance application's site plan map is drawn to scale and denotes the location of the existing dwelling, "AS BUILT", and proposed dwelling addition(s). It appears that the owners became aware of the dwelling's encroachment into the affected minimum side yards and minimum open yard space after a building permit (B2006-0260H) was issued for the dwelling addition near the property's north side and makai side yards. In addition, during the review and inspection of the original dwelling improvements and recently permitted addition, the dwelling and roof eave encroachment into the minimum side yards and minimum side yard open spaces went unnoticed by the agencies.

### **ALTERNATIVES**

Alternatives available to the applicants/owners to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or redesigning or relocating the dwelling/carport and/or proposed additions to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of TMK property with adjoining property and resubdivision to modify property lines or 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 original dwelling improvements built between circa 1998-1999 and recent addition being constructed under B2006-0260H will not be physically and/or visually obtrusive from the adjacent property(s) or visible from the nearest right-of-way. It appears that the recently permitted addition to the existing dwelling/carport into TMK's minimum 10 feet side yards will not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the original dwelling's living area and position and recently "permitted" dwelling addition/roof eave within the affected side yard(s) and attendant minimum side yard open spaces identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

Based on the foregoing findings, the variance request to allow a portion of the original dwelling and recently permitted addition including roof eaves/gutters to be constructed or remain on the subject TMK property 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.

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Furthermore, the variance 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.

However, the Planning Director finds there are no special and unusual circumstances to permit the owners to enclose existing open patios or convert the patios into living space and expand the roof eaves into the property's (west) side yard, when other design or building options are available to construct storage space(s) within "NEW 3 CAR GARAGE" or building improvements within the property's remaining building envelope. The Planning Director denies your variance request to construct additional improvements or living space within the property's west or mauka side yard.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request to allow the portions of the existing dwelling and recently permitted addition to remain in the affected side yard(s) 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 existing dwelling and portions of a dwelling addition/roof eave addition (being constructed pursuant to B2006-0260H) will not meet minimum side yard(s) and attendant minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map and other annotations on the site plan map dated "JULY 2005". The approval of this variance permits existing dwelling improvements and the recently permitted dwelling addition to remain on Lot 4 pursuant to variance and variance site plan map in subject variance file and approved building permit (B2006-0260H).
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.

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5. 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 to permit existing dwelling improvements constructed into the mauka side yard to remain and allow the permitted dwelling addition within the (north/makai) side yard(s) null and void.

The Planning Director **denies** your variance request to construct further dwelling (living space) improvements and roof eave into the property's minimum 8.0 feet side (west or mauka) yard and minimum 4.0 feet side yard.

Therefore in accordance with a recent charter amendment and Ordinance No. 99-112, you may appeal the director's decision to deny your variance for a proposed addition within the property's side (west) yard and request the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
  - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
  - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owner of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

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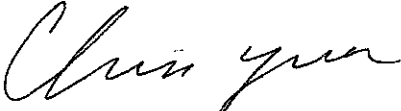
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The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above, we have enclosed GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY/DSA/CJY:cd

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Enclosure

xc: Real Property Tax Office-(Hilo)