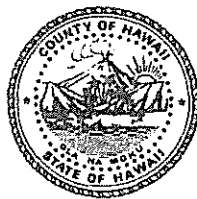


Harry Kim
Mayor



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

November 24, 2006

Mr. Clyde Matsunaga, P.E.
IMATA & ASSOCIATES, INC.
171 Kapiolani Street
Hilo, HI 96720

Dear Mr. Matsunaga:

VARIANCE-VAR 06-080

Applicant: IMATA & ASSOCIATES, INC.
Owners: LAWRENCE & ALICE AONO TRUST
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 2-2-028:017, (SUB 05-0000027)

After reviewing subject variance application, the Planning Director certifies approval of Variance-VAR 06-080 subject to variance conditions. Variance-VAR 06-080 permits portions of dwelling-storage-carport to remain, "AS- BUILT", with minimum 6.59 feet to 8.00 feet side yard and attendant minimum 4.0 feet side yard open space in lieu of minimum 8.0 feet side yard and attendant minimum 4.0 feet side yard open space according to the variance application's site plan drawing dated July 31, 2006. The variance request is from the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 3; Section 25-5-36, Minimum yards, (2), 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 (Proposed Lot 12-A-3), being portion of 37,209 square feet parcel and portion of Land Court Application 1159, is situated at Waiakea, South Hilo, Hawaii.

The property is zoned Multiple-Residential (RM-.75) by the County and designated Urban or "U" by the Land Use Commission (LUC). The applicant, on behalf of the owners, previously submitted a proposed 3-lot subdivision application (SUB 05-0000027) on or about February 17, 2006.

The subdivision application's preliminary plat map, prepared by Imata & Associates, Inc. and dated February 4, 2006, was issued "TENTATIVE APPROVAL" or TA by the Planning Department or Planning Director on August 1, 2005 subject to tentative approval conditions in a letter dated August 1, 2005 (Reference: TA-Condition No. 4).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 6, 2006 to address the dwelling/carport's position pursuant to TA-Condition No. 4 dated August 1, 2006. The variance application's site plan map is drawn to scale and prepared by Imata & Associates, Inc. The variance site plan map or "Inset" dated July 31, 2006 denotes portions of "Existing Carport" and attached "Existing Dwelling" were built within a minimum 8 feet side yard and attendant minimum 4 feet side yard open space of subject TMK property or proposed lot "Lot 12-A-3".

The "ATTACHMENT" to the variance application states in part:

"The owner (sic) is proposing to subdivide the property into three (3) lots. A recent survey reveals portions of one (1) of the dwellings (situated on proposed Lot 12-A-3) and the roof overhang are encroaching into the building setback. The required setbacks to the property line are 8.00 feet for the building and 4.00 feet for the roof overhang. The west end of the carport have (sic) clearances of 6.59 feet for the building and 3.50 feet for the overhang. Also, the main portion of the building towards the west side has a clearance of 7.28 feet."

"The dwelling has existed for over 18 years and has not jeopardized the public's safety or welfare, therefore, we are requesting a variance to allow the existing situation."

Note: The variance site plan map does not identify the location of any cesspool(s) or Independent Wastewater System (IWS). The variance request does not address the location or position of any fencing or landscaping improvements, etc. along or straddling common or proposed boundary lines.

3. **County Building Records:**

County building records indicate 6-Building Permits, 4-Electrical Permits, and 4-Mechanical or Plumbing Permit were issued between 1982 and 1989 to subject TMK property.

It appears that the 4-dwellings and other site improvements constructed on the subject TMK property were constructed prior to submittal of the subdivision application and/or were completed pursuant to these building and associated construction permits.

4 **Agency Comments and Requirements-VAR 06-080:**

- a. The State Department of Health (DOH) memorandum is dated October 23, 2006 (Refer to DOH memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum is dated October 30, 2006 and states:

“NO COMMENTS”

- 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 October 6, 2006 and October 16, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 19, 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 a minimum side yard. 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 the subject TMK property. The owners became aware of building encroachment issues after they submitted the subdivision application. No evidence has been found to show indifference or premeditation the owners or builders to deliberately create or intentionally allow these 18 +/- year old building encroachments to be built within the affected side yard.

It appears that the dwelling improvements and other site improvements were constructed according to building permits and other associated construction permits issued to subject TMK property between 1982 and 1989.

Mr. Clyde Matsunaga, P.E.
IMATA & ASSOCIATES, INC.
Page 4
November 24, 2006

It appears that during construction of the dwelling/carport (situated on proposed "Lot 12-A-3"), portions of the dwelling/carport/roof eave within the affected side 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/carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining TMK property and resubdivision to modify property lines or adjust minimum yards, etc.

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 a dwelling and attached carport improvements constructed approximately 18 +/- years ago on the subject TMK property or into the property's affected minimum side yard are not physically and/or visually obtrusive from the adjacent property(s) or publicly owned right-of-way (Iolani Avenue); and, do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these dwelling, carport, and roof eave position on the subject TMK property or proposed lot identified on the variance application's site plan map ("Inset") 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

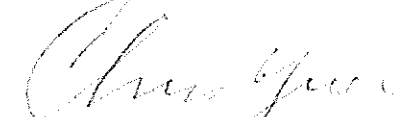
This variance request is approved subject to the following conditions:

Mr. Clyde Matsunaga, P.E.
IMATA & ASSOCIATES, INC.
Page 5
November 24, 2006

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/carport/roof eave located on the subject TMK property or proposed "Lot 12-A-3" will not meet the minimum 8.00 feet side yard and minimum 4.00 feet side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated July 31, 2006. The approval of this variance permits the affected dwelling/carport/roof eaves or overhang improvements to remain, "AS BUILT", on the subject TMK property or proposed "Lot 12-A-3" according to the variance site plan map dated July 31, 2006.
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:cd
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xc: Real Property Tax Office-(Hilo)
SUB 05-0000027