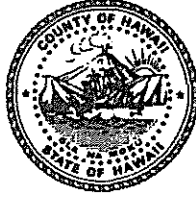


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

October 2, 2007

Mr. Ryan C. and Ms. Lina A. Elaban  
P.O. Box 6795  
Hilo, HI 96720

Dear Mr. and Ms. Elaban:

**VARIANCE-VAR 07-056**

**Applicants:** RYAN C. ELABAN, ET AL.  
**Owners:** RYAN C. ELABAN, ET AL.  
**Request:** Variance from Chapter 25, Zoning  
Minimum yards  
**Tax Map Key: 1-7-008:034, Lot 2-C-9**

After reviewing your application, the Planning Director hereby approves VARIANCE-VAR07-056 subject to variance conditions. The variance allows portions of a "HOUSE" to remain with a minimum 22.21 feet front yard in lieu of the TMK property's minimum 30.00 feet front yard according to the variance site plan map dated July 6, 2007. The variance is from the TMK property's minimum front yard 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.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property, Lot 2-C-9 containing 43,572 square feet, OIaa Reservation Lots, is situated at OIaa, Puna, Hawaii.

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 July 18, and July 31, 2007. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, dated July 6, 2007, denotes portions of a "HOUSE" was built into the property's minimum 30 feet yard of "LOT 2-C-9" or subject TMK property.

The applicant's background dated July 18, 2007 states in part:

"We purchased this property in April of 2001, and although it was only 864 square feet in size, we had hopes that we could one day add on additional square footage we felt would turn this into our "dream home." (sic) We were finally able to do this in early 2003, when we obtained plans/drawings from a local architect/designer. We decided to build this addition as an owner/builder, and once we obtained the proper permits, we began construction. My brother was a local union carpenter on Oahu who came over to help me pour the concrete slab per the plans. Once that was done, we started the project and after 2 years, finished it and got the "final" in 2005."

**Note:** The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of "CHAIN-LINK FENCE" and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (900269, 030084), Electrical Permits (E902368, E2004-0254H), and 3-Mechanical (M910730, M921230, M030323) or Plumbing Permits were issued to subject TMK property. It appears that the Dwelling or "HOUSE" on "LOT 2-C-9" was built pursuant to these building and associated construction permits issued between 1990 and 2003.

4. **Agency Comments and Requirements-VAR 07-056:**

- a. The State Department of Health (DOH) memorandum dated August 21, 2007 states in part:

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

- b. The Department of Public Works (DPW) memorandum is dated September 4, 2007 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 applicants mailed first notices on July 23, and July 30, 2007 and second notice on August 23, 2007 to surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 23, 2007.
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 applicants or current owners submitted the variance application to address or resolve the dwelling encroachments within the property's minimum 30 feet front yard along the Old Volcano Road. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE" and other site improvements on "LOT 2-C-9". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the current owners or builders to deliberately create or intentionally construct a portion of the dwelling within the subject TMK property's front yard.

It appears that the original dwelling and subsequent dwelling addition were constructed according building permits and other associated construction permits issued to subject TMK property. It appears that dwelling encroachment into the property's front yard went unnoticed by the owners and agencies during construction.

### **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 2-C-9 with the right-of-way (Old Volcano Road) and resubdivision to modify property lines or adjust minimum yards.

Mr. Ryan C. and Ms. Lina A. Elaban

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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 4 years ago within the minimum front yard are not physically and/or visually obtrusive from the adjacent properties or right-of-way (Old Volcano Road); and therefore, it is felt that the portion of the dwelling constructed into the property's front yard along the Old Volcano Road do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns.

The subject variance application was acknowledged by letter dated August 13, 2007 and additional time to review and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance to October 15, 2007.

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**

The variance application 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.

Mr. Ryan C. and Ms. Lina A. Elaban

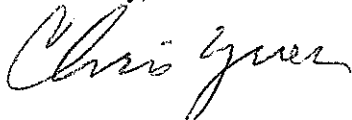
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3. Portions of the dwelling or "HOUSE" on "LOT 2-C-9" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated July 6, 2007. The approval of this variance permits the "HOUSE" on the subject TMK property or "LOT 2-C-9" according to the variance site plan map.
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 null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Hilo)