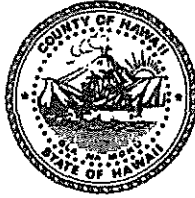


Larry Kim
Mayor



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 16, 2007

Mrs. Mei Ceria
1396 Alu Street
Hilo, HI 96720

Dear Mrs. Ceria:

VARIANCE-VAR 07-060

Applicant: MEI CERIA

Owners: RILEY CERIA, ET AL.

**Request: Variance from Chapter 25, Zoning
Minimum yards**

Tax Map Key: 2-4-070:069, Lot 27

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-060 subject to variance conditions. The variance permits portions of a "HOUSE" and attendant "ROOF EAVES", and "STORAGE" room, to remain on Lot 27 with a minimum 8.90 feet to minimum 9.27 feet side yard and attendant minimum 4.81 feet side yard open space; and, minimum 18.83 feet rear yard, respectively, in lieu of required minimum 10 feet side yard, minimum 20 feet rear yard, and minimum 5.00 side yard open requirement according to variance site plan map dated June 25, 2007. The variance is from the TMK property's minimum side yard, rear yard, and attendant minimum side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(A)(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 referenced TMK property, Lot 27 containing 10,947 square feet, Golden Shower Trees Estates, Unit II, is situated at Waiakea, South Hilo, Hawaii. The referenced TMK property's address is 1396 Alu Street.

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 July 30, 2007 and August 21, 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 25, 2007, denotes portions of a "HOUSE", "ROOF EAVES", and "STORAGE" within attached carport were built within the minimum side and rear yards of "LOT 27" or subject TMK property.

The applicant's letter July 26, 2007 states in part

"County records indicate the dwelling received final building permit (Permit # 852228) approval on February 28, 1996 (sic).

We were unaware of any violation of setbacks until a survey was done on June 25, 2007 by The Independent Hawaii Surveyors, LLC in conjunction with our purchase of this home. This survey revealed the house projects 1.10 feet into the side County Zone (sic) Code 10-foot building setback on the northwest boundary, its roof projects 5.19 feet into this setback. The storage room projects 1.17 feet into the rear 20-foot building setback.

The prior owner was an elderly gentleman who was not aware of this problem when he purchased the home on April 26, 1989. We believe these encroachments into the boundary setbacks were not intentionally done and are relatively minor in nature. As the new owners, we are applying for this variance to address the issue."

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 fencing, rock walls, and any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 1-Building Permit (852228), 1-Electrical Permit (EH67317), and 1-Mechanical (MH40959) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling/eaves, attached carport, and storage room on "LOT 27" were built pursuant to a building and associated construction permits issued between 1985 and 1986.

4. **Agency Comments and Requirements-VAR 07-060:**

- a. The State Department of Health (DOH) memorandum is dated October 12, 2007. Refer to the State of Hawaii-DOH memorandum in variance file.
- b. The Department of Public Works (DPW) memorandum or application comments dated September 21, 2007 states:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant submitted copies of notices and proof of mailing both notices via USPS to surrounding property owners. According to USPS mailing receipts, the first and second notices were mailed to surrounding property owners on August 21, 2007 and September 4, 2007, respectively. Notice of this application and correction notice were published in the Hawaii Tribune Herald and West Hawaii Today on September 4, 2007 and October 9, 2007, respectively.

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 submitted the variance application to address or resolve the portions of a "HOUSE" or portions of a dwelling, roof eave, and storage room encroachments within the property's minimum side and rear yards required by the Zoning Code. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE", "ROOF EAVES", "STORAGE", and other site improvements upon "LOT 27". The current owners became aware of building encroachment issues during escrow and after they purchased the property.

No evidence has been found to show indifference or premeditation by previous owner(s) or builders to deliberately create or intentionally allow these building encroachments to be built within the property's minimum yards and minimum open yard space required by the Zoning Code.

According to the building records, it appears that the 21 year old dwelling improvements were constructed pursuant to a building permit and other associated construction permits issued to subject TMK property between 1985 and 1986. During construction of the dwelling and attached carport, nearly 21 + years ago, it appears that the dwelling, roof eaves, and storage room encroachments within the property's side and rear yards went unnoticed by the previous owner(s), builders, and agencies.

ALTERNATIVES

Alternatives available to the applicant to correct and/or address the building encroachments constructed into the affected yards of the subject TMK property 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 27 with adjoining COH-Drainage Lot (TMK: 2-4-070:042) and/or adjoining residential property (TMK: 2-4-070:060, Lot 18) 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 portions of a dwelling, storage room within attached carport, and associated roof eaves constructed approximately 21 years ago into the property's minimum side yard along a drainage lot owned by the COH and minimum rear yard are not physically and/or visually obtrusive from the adjoining properties or Alu Street. It appears that these 21 + year old building encroachments identified on the variance application's site plan map do not depreciate or detract from the character of the surrounding neighborhood, surrounding land patterns; and 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

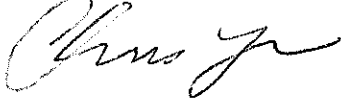
This variance application is approved subject to the following variance conditions:

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 or portions of "HOUSE", "ROOF EAVES", and "STORAGE" within attached carport on "LOT 27" will not meet the minimum side yard, attendant minimum side yard open space, and minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the dwelling, storage room, and attendant roof eaves improvements to remain on the subject TMK property or "LOT 27" pursuant to the variance site plan map dated June 25, 2007.
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.
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.

Mrs. Mei Ceria
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-(Hilo)