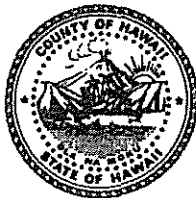


**Harry Kim**  
Mayor



**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

January 15, 2008

Sandra Pechter Song, Esq.  
Attorney at Law  
10 Kamehameha Avenue  
Hilo, HI 96720

Dear Ms. Song:

**VARIANCE-VAR 07-074**

**Representative: SANDRA P. SONG, Esq.**  
**ATTORNEY AT LAW**

**Applicant: HARRY CASTRO**

**Owners: VIRGIL KIRK, ET AL.**

**Request: Variance from Chapter 89 25, Zoning**  
**Minimum yards**

**Tax Map Key: 1-5-086:010, Lot 2**

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance-VAR 07-074 subject to variance conditions. The variance permits portions of dwelling including attached open carport/eaves to remain on the above referenced TMK property or Lot 2 with minimum 10.0 feet to minimum 14.0 feet front yard and attendant minimum 4.3 feet to minimum 9.5 feet front yard open space in lieu of minimum 15.00 feet front yard and minimum 10.00 feet front yard open space requirements pursuant to variance application's site plan map dated September 1, 2006. The variance is from the TMK property's minimum front yard and attendant minimum front yard open yard space requirements 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).

**JAN 18 2008**

## **BACKGROUND AND FINDINGS**

1. **Location.** The subject TMK property, Lot 2 containing 8,849 square feet, within Block 46, Hawaiian Beaches, File Plan 693, is situated at Waiakahiula, Puna, Hawaii. The referenced TMK property's street address is 15-192 S. Puni Kahakai Loop.

The property is zoned Agricultural (A-1a) 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 November 2, 2007. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray & Associates, LLC. The variance site plan map, dated September 1, 2006 denotes portions of the "DWELLING/OPEN CARPORT" and associated "EAVES" were constructed into the property's minimum 15 feet front yard of the subject TMK property or "LOT 2".

The representative's background report states in part:

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"The southern corner of the existing open carport encroaches into the front yard by 1.0 foot. The opposite or west side corner of the carport encroaches into the front yard by 5.0 feet. The roof eave extending along the front of the carport encroaches into the front yard by 6 inches to 5.7 feet. It appears that a siting error during construction of the single-family dwelling in 2001 created this encroachment problem that was not revealed until 2006 when a survey was conducted in conjunction with the sale of the property.

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"The Applicant believed that the construction of the building, which was completed in 2001, according to the Real Property Tax records, was done in accordance with the approved plans and permits, and that the building was sited in accordance with the yard and open spaces as indicated in the approved building plans.

In September, 2006, a survey was prepared for the Property by Paul H. Murray, in conjunction with the Applicant's sale of the Property to the present owners. The survey revealed that the dwelling unit was, in fact, improperly sited on the Property, with the open carport and the carport eaves encroaching into the front yard open space required by the Zoning Code. The survey also revealed that the chain link fence fronting the property was located entirely within the Puni Kahakai Loop right of way, fronting the Property. (See Plot Plan Survey, Exhibit 5 attached hereto.)

The parties agreed to proceed with the sale, notwithstanding the encroachment problem, with the Applicant removing the chain link fence and agreeing to apply for a variance for the carport/eave encroachment since removal of these portions of the home was not feasible."

**Note:** The variance site plan map dated September 1, 2006 does not denote the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of fence(s), gate, and any landscaping, etc. along or straddling common boundary lines. According to the representative's background report, the "Applicant" will remove a "chain link" fence situated within the "right-of-way" or Puni Kahakai Loop. (Refer to variance conditions).

3. **County Building Records:**

Rea Property Building Permit records show 2-Building Permits (000983, 001471), 2-Electrical Permits (EH70024, E010697), and 1-Mechanical (M010733) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling including attached open carport/eaves on "LOT 2" was constructed to building and associated construction permits issued between 1987 and 2001.

4. **Agency Comments and Requirements-VAR 07-074:**

- a. The State Department of Health (DOH) memorandum dated December 17, 2007 states:

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

- b. The Department of Public Works (DPW) memorandum dated December 19, 2007 states in part:

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“We have reviewed the subject application forwarded by your memo dated November 29, 2007 and offer the following comments for your consideration.

Note number 1 of the survey plot plan accompanying the application states that “The chain link fence fronting the subject parcel is located entirely in the Puni Kahakai Loop right of way as detailed in the drawing.

Puni Kahakai Loop is a County right-of-way. The chain link fence shall be removed or relocated wholly within private property (outside the County right-of-way).”

5. **Notice to Surrounding Property Owners**. The representative submitted affidavits regarding mailing of notices to surrounding property owners to the Planning Department. According to the affidavits, the first and second notices were mailed on November 2, 2007 and December 24, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 7, 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. A telephone inquiry regarding the nature of the variance and location of the subject TMK property was received from surrounding property owner-Claude E. Maples, Jr. Other than the foregoing telephone inquiry, no written objections were received by the Planning Department.

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

The representative, on behalf of the applicant, submitted the variance application to address dwelling or open carport encroachment within the property’s minimum front yard. The variance application’s site plan map was prepared by a surveyor and denotes the location dwelling/open carport/eaves and other site improvements upon “LOT 2”. The representative, applicant, and current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous builders or owners to deliberately create or intentionally allow the building encroachments to be built within the property’s front yard and attendant front yard open space.

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According to County permit records, the original dwelling was demolished to construct the dwelling and open carport upon Lot 2. It appears that during construction of the dwelling/open carport/eaves denoted on the variance site plan map, the carport and eaves constructed into the property's front yard constructed between 2000 and 2001 went unnoticed by the 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 2 with the County owned right-of-way (Puni Kahakai Loop) fronting the Lot 2 and resubdivision to modify property lines or adjust minimum front 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 the carport and eave encroachments constructed approximately 5 years ago within the property's minimum front yard and associated front yard open space are not physically and/or visually obtrusive from adjacent properties or publicly owned right-of-way fronting Lot 2 (Puni Kahakai Loop). It appears that these 6 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the Lot 2's front yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision. According to the representative, portions of a chain link fence including gate identified on the site plan map and located within the County owned right-of-way will be removed.

The subject variance application was acknowledged by letter dated November 29, 2007 and additional time was requested by the representative to send second notice to surrounding property owners. The applicant's representative requested an extension of time to send notice to surrounding property owners and granted the Planning Director extension of time to January 18, 2008 to render a decision on the variance application.

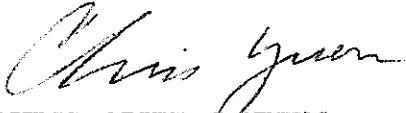
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare subject Variance null and void.

Sincerely,



CHRISTOPHER L. YUEN

Planning Director

WRY:cs

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xc: Real Property Tax Office-(Hilo)  
Claude E. Maples, Jr.