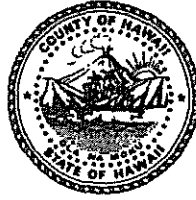


Harry Kim
Mayor



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 17, 2008

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

Dear Mr. Matsunaga:

VARIANCE-VAR 07-075

Applicant: IMATA & ASSOCIATES, INC.

Owners: CHARLES ALLEN, JR.

Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-4-009:053, Lot 1

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-075 subject to variance conditions. The variance permits portions of a 1-Story Dwelling (Slab on Grade) and attendant roof eaves or "Overhang" being built on Lot 1 to remain, with minimum 10.29 feet to minimum 15.00 feet rear yard and attendant minimum 6.83 feet to minimum 10.00 feet rear yard open space in lieu minimum 15.00 feet minimum rear yard and attendant minimum 10.00 feet rear yard open space according to a survey map submitted with the variance application. The variance is from the TMK property's minimum rear yard and attendant minimum rear yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (1)(A), Section 25-5-8, Other regulations, 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 1 containing 7446 square feet, being portion of Grant 9746 to Hideo Chinen, is situated at Waiakea, South Hilo, Hawaii. The referenced TMK property's street address is 137 Puainako Street.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Notice of Violation and Order (ZCV 07-125E)**. Subsequent to receipt of Planning Department letter dated September 7, 2007, the owner submitted required survey map prepared by a licensed Hawaii surveyor denoting location of dwelling being constructed upon subject TMK property pursuant to Building Permit B2007-1688H. Subsequent to review of the survey map, the owner-Charles Allen, Jr. was cited for building portions of a 1-story dwelling including projections (roof eaves) into the property's minimum 15 feet rear yard and attendant minimum 10 feet rear yard open space required by Chapter 25, the Zoning Code, according to violation letters (ZCV 07-125E) dated October 16, 2007 and follow-up letter and correction letter dated October 31, 2007, and November 16, 2007, respectively.

The violation letter dated October 31, 2007 attached to the variance application states in part:

Page 1 and Page 2:

"Our Zoning Inspector obtained a copy of the Inspector's Copy of Building Permit B2007-1688H. After reviewing the "Plot Plan" on the approved building permit plans, it has been verified that the above mentioned building permit was issued improperly. Although the Planning Department identified the "rear" yard (setback) as "15-feet," (sic) on the Plot Plan of the permitted drawings, the Plot Plan showed a distance of 9'-6" from the proposed new dwelling's southeastern-most rear corner to the "rear" property line.

Our Zoning Clerk indicated that he was aware of this encroachment, but thought that by identifying the correct "rear yard (setback)," (sic) this would override the written dimensions and the builder would adjust the location of the dwelling structure according to our setback requirements. He did not realize that the size of the drawn dwelling structure was either too large for the allowed buildable area or that he should have "rejected" the plans, to have the Plot Plan redrawn to properly relocating the structure out of the rear yard (setback).

Due to this error on the part of the Planning Department, the following "Amends" the "Additional corrective action listed on Page 2, of our Notice of Violation and Order letter dated October 16, 2007:

The following is amended to "add:" (sic)

3. **We will waive the \$250.00 filing fee** upon submission of your variance application. (Please attach a copy of this letter with your variance application upon submission to this office)."

Note: A copy of November 9, 2007 correction letter (correcting the TMK parcel number, etc.) was also included and attached to the variance application.

Pursuant to the background information, findings, and corrective actions stated in violation letters, the owner elected to file for variance from Chapter 25, the Zoning Code.

3. **Variance Application-Site Plan.** The applicant submitted the variance application from the Chapter 25, Zoning Code, and attachments on November 19, 2007. (Note: The variance filing fee was waived pursuant to Planning Department violation letter dated cited above).

The variance application's site plan map is drawn to scale and prepared by Imata & Associates, Inc. The variance site plan map, denotes portions of the 1-story dwelling and associated roof "OVERHANG" are being constructed within the property's minimum 15 feet rear yard of "LOT I" or subject TMK property (Lot 1).

The applicant's attachment or background states in part:

"The property is situated at 137 Puainako Street directly across of Waiakea Elementary School.

A recent survey revealed a portion of the existing dwelling is encroaching into the rear building setback. The required rear building setback is 15.00 feet. The clearance to the southeast building corner is 10.29 feet.

Solutions or alternatives to resolving the problem are:

1. Remove encroaching portion of the dwelling.
2. Try to secure property from the adjacent lot and reconfigure the boundary (sic) insure the proper setbacks.

3. Secure variance to allow the existing situation.

The dwelling is not jeopardizing the public's safety or welfare, therefore, I am requesting variance to allow existing situation."

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 CRM walls and landscaping, etc. along or straddling common boundary lines.

4. **County Building Records:**

Hawaii County Real Property permit records show 1-Building Permit (B2007-1688H), 1-Electrical Permit (E2007-1650H), and 1-Mechanical (M2007-1512H) or Plumbing Permit were recently issued to subject TMK property.

5. **Agency Comments and Requirements-VAR 07-075:**

- 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 or comments dated December 19, 2007 states in part:

"NO COMMENTS"

6. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. According to the submittals and postal receipts received, first notice was mailed on November 15, 2007 and second notice was mailed on December 7, 2007 to surrounding property owners by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 7, 2007.

7. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following comments or objection letter from was received.
 - 7a. Comments and objection letter from Ben Akamine and Jeffrey Choi received on November 27, 2007.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and roof overhang upon subject TMK property. It appears that the owner's builder and/or owner became aware of encroachment issues during inspection(s) of the dwelling by the DPW. Subsequent to the foregoing and inspections of the building site by the Planning Department; a survey map denoting the position of the dwelling including building envelope disclosed the extent of the encroachment into the property's rear yard. The owner was found to be in violation of the County Zoning Code (minimum yards) by the Planning Department and sent "Notice of Violation and Order (ZCV 07-125E)" letter dated October 16, 2007.

Pursuant to the Planning Department's violation letter dated October 16, 2007 and follow-up letters dated October 31, 2007 and November 9, 2007, the applicant, on behalf of the owner, submitted subject variance application requesting variance to allow portions of the dwelling including associated roof eaves or encroachments within the property's rear yard to remain. Pursuant to copy of the October 16, 2007 letter included with the variance application, it appears that the dwelling's size and position upon the property including the dwelling encroachments into the property's rear yard and rear yard open space were due to an error by County staff to approve the detailed house plans and site plan submitted with the building permit application or plans approved or assigned Building Permit B2007-1688H.

The dwelling improvements upon the subject TMK property are being built pursuant to detailed house plans including original site plan that were reviewed and approved by Planning Department, other agencies, and DPW-Building Division that were submitted with the building permit application. The dwelling's size and position of the dwelling on subject TMK property essentially comport to the detailed building plans including scale drawn site plan attached to the building permit application reviewed and approved by the County agencies; and assigned Building Permit B2007-1688H.

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 subject TMK property with adjoining lots (TMK: 2-4-009:052 and 2-4-009:101) 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.

Given the above circumstances and alternatives, it is possible that the variance request and variance application could have been avoided by requiring the owner to modify the plans, e.g. by reducing the floor area of the proposed dwelling. Other design options include constructing a 2-story dwelling to fit within the property's allowable building envelope, modifying the property size, etc. However, the property's lot geometry/land area and adjoining properties are non-conforming in shape and size; etc. After studying other interpretations of the building envelope within the property, it is felt that portions of the 1-story dwelling including eaves encroaching or built into the property's rear yard will not depreciate or significantly detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, after considering the circumstances to issue the Building Permit and consideration of other building options, in this instance, it is felt that portions of the dwelling within the property's rear yard will not detract from the character of the surrounding land patterns and immediate neighborhood.

Based on the foregoing findings and circumstances regarding the approval of the building plans and issuance of the building permit and other unusual circumstances regarding the property's unusual lot geometry and lot size, the variance request by the applicant, on behalf of the owner, 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 hereby **approved** subject to 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 the 1-story dwelling being constructed on subject TMK property will not meet the minimum rear yard and attendant minimum open yard space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the 1-Story dwelling including roof "Overhang" improvements to remain on the subject TMK property according to the site plan map in subject variance file-VAR 07-075.

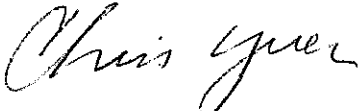
The applicant or current owners shall address the status of Building Permit-B2007-1688H issued to subject TMK property by the DPW-Building Division (Hilo). This active or "open" building permit including associated electrical and plumbing permits issued to subject TMK property shall be completed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner to others.

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.

Mr. Clyde Matsunaga
IMATA & ASSOCIATES, INC.
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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

WRY:pak
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cc: Real Property Tax Office-(Hilo)
Ms. Nani Masaki, DPW-Building Division
Mr. Jeffrey Choi