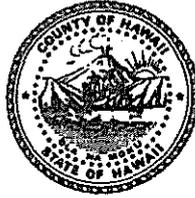


Harry Kim
Mayor



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

February 12, 2008

PAUL H. MURRAY & ASSOCIATES, LLC
P. O. Box 1189
Hilo, HI 96720

Gentlemen:

SUBJECT: VARIANCE-VAR 07-077

Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owner: KELLI TOMOTA
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 2-5-040:010, Lot 7

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-077 subject to variance conditions. The variance permits portions "DWELLING BUILT 1981" and attendant roof "EAVES" to remain on Lot 7 with minimum 6.5 feet to minimum 6.8 feet (mauka) side yard and attendant minimum 2.7 feet to minimum 3.0 feet side yard open space; and, minimum 2.7 feet to minimum 3.99 feet and minimum 3.1 feet to minimum 3.99 feet (makai) side yard open space(s) according to the variance application's site plan map dated October 14, 2007 and other submittals. The variance is from the TMK property's minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (1)(B), 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 7 containing 3977 square feet, Ponahawai House Lots, being Land Patent Grant No. 10,413 to Juichi Yokoyama, is situated at Ponohawai, South Hilo, Hawaii. The subject TMK property's address is 1493 Kaumana Drive.

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The subdivision creating Lot 7, containing 3977 square feet, was approved in 1936. The subject TMK property was zoned Single-Family Residential (RS-15) 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 19, 2007 and revised site plan map dated December 3, 2007. The revised variance site plan map is drawn to scale and was prepared by a surveyor and Paul H. Murray and Associates, LLC. The revised site plan map, dated December 3, 2007, denotes portions of the "DWELLING BUILT 1981" and attendant roof "EAVES" upon the property and within the subject TMK property's minimum 8 feet side yards, including location of the 5'-0" wide future road widening line upon "LOT 7" or subject TMK property.

The applicant's background report dated November 14, 2007 states in part:

"Building Permit Number 811422 for the subject dwelling was issued on June 03, 1981 for new one (1) bedroom and one (1) bath. The date of completion was August 11, 1981. Building Permit Number B2007-0753H was issued on March 16, 2007 for a post-n-pier, 7'6" x 11'0" "as built" office, 16'x12' carport conversion into bedroom with bath, 8'x16' 1-car carport addition. The date of completion was September 13, 2007. The Owners were unaware of and would have not have discovered any problems until a modern survey was conducted on October 14, 2007 by Paul H. Murray & Associates, LLC revealed the setback violations."

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 the access via Kaumana Drive, walls and/or fencing and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office permit records show 2-Building Permits (811422, B2007-0753H), 3-Electrical Permits (EH58461, E021529, E2007-1010H), and 2-Mechanical (MH34876, M2007-0781H) or Plumbing Permit were issued to subject TMK property. It appears that

the 1-story dwelling including carport was approved and built on "LOT 7" pursuant to 2-building permits and associated electrical and plumbing permits issued between 1981 and 2007 by the DPW.

4. **Agency Comments and Requirements-VAR 07-077:**

- 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"

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of first and second notice sent to surrounding property owners and mailing receipts affixed to a list of surrounding property owners to the Planning Department. The submittals and mailing receipts show first and second notices were mailed on December 12, 2007 and January 4, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 12, 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 general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, submitted the variance application to resolve and address dwelling encroachments within the property's minimum side yards. The variance application's site plan map (DECEMBER 3, 2007) was prepared by a surveyor and denotes the position of the dwelling including roof eaves, "as built", on "LOT 7". According to the applicant's background report (page 2), "the size of this parcel (3,977 square feet) does not conform to the minimum Lot size provisions for residential Lots as outlined in Chapter 25, Zoning Code."; and, the current owner became

aware of encroachment issues within subject TMK property's minimum yards and associated minimum open yard spaces after a modern survey was completed. No evidence has been found to show indifference or premeditation by previous owner(s) or builders to deliberately create or intentionally allow portions of the dwelling and attendant roof eaves to be built into the property's minimum side yards and attendant minimum side yard open space(s).

It appears that the original dwelling improvements and subsequent dwelling improvements were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1981 and 2007, portions of the dwelling and associated roof eaves built into the property's minimum side yards and attendant minimum side yard open space requirements went unnoticed by the builders and agencies.

ALTERNATIVES

Alternatives available to the applicant or current owner to correct the building encroachments constructed into the affected yards of the subject TMK property include the following actions:

1. Remove portions of the dwelling and associated eaves within the minimum yards or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 7 (wedge shaped) with adjoining properties (TMK: 2-5-040:-011, Lot 8 or TMK: 2-5-040:009, Lot 6) 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.

It appears that building encroachments constructed approximately 26 + years ago within the minimum side yards are not physically and/or visually obtrusive from the adjacent properties (Lot 6 and Lot 8) or public right-of-way (Kaumana Drive). Given the property's topography and association with adjoining properties, it appears that the

portions of the 26 year old dwelling and associated roof eaves within the minimum side yards do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the building and roof eave encroachments identified on the variance application's site plan map within the subject TMK property's minimum side yards will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated December 5, 2007 and additional time to send notice of variance to surrounding property owners was requested by the applicant. Pursuant to the applicant's letter dated January 4, 2008, the applicant granted the Planning Director an extension of time to February 16, 2008 to render decision on the subject variance application.

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 the dwelling located on "LOT 7" will not meet the minimum side yard and attendant minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the dwelling and attendant roof eaves to remain, on the subject TMK property

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or "LOT 7" according to the variance site plan map dated December 3, 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 dwelling or building additions 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 subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:cs

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xc: Real Property Tax Office-(Hilo)