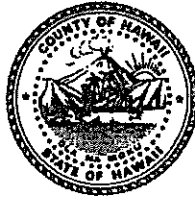


Harry Kim  
Mayor



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

June 26, 2008

Mrs. Marti Morishige  
P. O. Box 1666  
Keaau, HI 96749

Dear Mrs. Morishige:

**VARIANCE-VAR 08-028**

**Applicant: MARTI MORISHIGE**  
**Owner: SLOCUM JOINT REVOCABLE TRUST**  
**Request: Variance from Chapter 25, Zoning**  
**Minimum yards**  
**Tax Map Key: 1-8-074:015, Lot 239**

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-028 subject to variance conditions. The variance permits portions of "HOUSE" and attendant "ROOF EAVES" to remain upon Lot 239 with minimum 8.81 feet to minimum 10-foot side yard and attendant minimum 4.95 feet to minimum 5-foot minimum side yard open space in lieu of minimum 10 feet side yard and minimum 5 feet side yard open space requirement according to the variance application's site plan map dated October 23, 2002. The variance is from the TMK property's minimum side yard and attendant minimum side yard open 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).

**BACKGROUND AND FINDINGS**

1. **Location.** The referenced TMK property, Lot 239 containing 12,086 square feet, Glenwood Subdivision, Increment 1, is situated at Olaa, Puna, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

JUN 30 2008

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on May 1, 2008. The application includes a site plan map by The Independent Hawaii Surveyors is drawn to scale. The variance site plan map, dated October 23, 2002, denotes portions of "HOUSE", and attendant "ROOF EAVES" were built into minimum 10 feet side yard upon "LOT 239" or subject TMK property.

The applicant's background dated April 30, 2008 states in part:

"In 2003, Duane and Peggy Slocum (Slocum Joint Revocable Trust) bought the subject property knowing the house corner went into the setback area.

Now, in 2008, the Slocum's want to sell the subject property (sic). To assist in ridding the property of encumbrances, the Slocums are applying for a variance.

The plans and permits for the original building/house were finalized and okayed in 1992."

**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 the driveway and any landscaping, etc. along or straddling the property's boundary lines shared with abutting property(s) or Lot 238 and Lot 240.

3. **County Building Records:**

County building records show 2-Building Permits (902136, 922347), Electrical Permit (E910918), and Mechanical (M910800, M920251) or Plumbing Permit were issued to subject TMK property. The dwelling or "HOUSE" and detached "CARPORT" upon "LOT 239" were built pursuant to these building and associated construction permits issued between 1990 and 1992.

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4. **Agency Comments and Requirements-VAR 08-028:**
  - a. The State Department of Health (DOH) memorandum is dated June 26, 2008. Refer to the State of Hawaii-DOH memorandum in variance file.
  - b. No comments were received from the Department of Public Works (DPW).
5. **Notice to Surrounding Property Owners.** The applicant submitted copy of first notices, attachments, and mailing receipts affixed to list of surrounding property owners to the Planning Department on June 5, 2008. According to the affixed mailing receipts, first notice and second notices were mailed on May 8, 2008 and second notice on May 22, 2008, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 18, 2008.
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, on behalf of the owner, submitted the variance application to address or resolve the dwelling's position upon subject TMK property's minimum side yard. The variance application's site plan map denotes a portion of the dwelling including attendant roof eaves were built into a minimum 10 feet side yard of "LOT 239". The current owner became aware of dwelling encroachment issue circa 2002. No evidence was found to showing indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built into the property's minimum 10 feet side yard and associated minimum 5 feet side yard open space.

It appears that the dwelling and detached carport were constructed according to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of both dwelling and detached carport, the portion of the "HOUSE" and roof eave constructed circa 1990-1992, the dwelling encroachment into a minimum side yard of the subject TMK property went unnoticed by owner/builder and agencies.

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### **ALTERNATIVES**

Alternatives available to the applicant to correct the building encroachments constructed into the affected side yard 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 239 with adjoining TMK parcel or lot (TMK: 1-8-074:016, Lot 240) and resubdivision to modify property lines or adjust minimum side 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 portions of the dwelling and associated roof eaves constructed approximately 16 + years ago into the property's minimum 10 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 240) or both privately owned rights-of-way (Malulani Road and Hule'ia Place). It appears that the position of the 16+ year old dwelling and portions or corner of the dwelling built upon and into property's minimum, 10 feet side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portion of the dwelling and attendant roof eaves upon and within the minimum side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the 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.

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### **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 or "HOUSE" upon "LOT 239" will not meet the minimum side yard and minimum side yard open space required by Chapter 25, the Zoning Code, according to the variance application's site plan map dated October 23, 2002. The approval of this variance permits the "HOUSE" and attendant roof eaves to remain upon subject TMK property or "LOT 239" according to the variance site plan map dated October 23, 2002.
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.

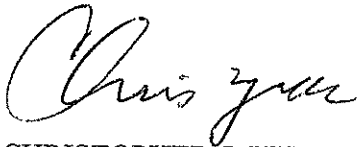
Mrs. Marti Morishige

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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,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN  
Planning Director

WRY:cs

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xc: Real Property Tax Office-(Hilo)