

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawaii Office  
74-5044 Ane Keohokalole Hwy  
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## County of Hawai'i

### PLANNING DEPARTMENT

East Hawaii Office  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

January 2, 2015

Herbert Ching  
P. O. Box 594  
Holualoa, HI 96725

Dear Mr. Ching:

**SUBJECT: Application: Variance VAR-14-000194**  
**Applicant: HERBERT CHING**  
**Owners: HERBERT AND JENNIFER CHING**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1,**  
**Section 25-5-7, Minimum Yards, (a), Permitted Projections**  
**into Yards and Open Space Requirements (Encroachment**  
**into West Front Yard Setback)**  
**TMK: 2-3-024:023; Lot 6**

The Planning Director certifies the **approval** of VAR 14-000194, subject to conditions. The variance allows for the "as-built" open deck platform with a 4-foot railing with a zero front yard setback and associated front yard open space. This allowance is in lieu of the required minimum 15-foot front yard setback and 10-foot front yard open space requirement. The variance is from the subject property's minimum rear (southeast) yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 1, Section 25-5-7 minimum yards and Article 4, Division 4, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 15,677 square feet and is situated in Pi'ihonua House Lots 3<sup>rd</sup> series, South Hilo, Hawai'i. The subject property's street address is 23 Lele Street.
2. **County Zoning.** Single-Family Residential –7,500 square feet (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet for front and rear; 8 feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 14, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan denotes the placement of the "as-built" open deck platform with a 4-foot high open railing protruding into the minimum 15-foot west front yard setback and 10-foot front yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the 4 bedroom, 1 bath single-family dwelling consisting of 800 square feet of living area was built in 1939.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated March 7, 2014.
  - b. No comments received from the Department of Public Works –Building Division.
8. **Public Notice.** The applicant submitted a copy of notice sent to surrounding property owners (including affidavits), by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on February 18, 2014 and March 3, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 27, 2014.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 21, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to December 31, 2014.
10. **Comments from Surrounding Property Owners or Public.**
  - a. Objection letter dated March 10, 2014 from Nathan Mattos.  
(See attached objection letter.)
  - b. Objection letter dated March 10, 2014 from Damian Mattos.  
(See attached objection letter.)

#### ANALYSIS OF GROUNDS FOR VARIANCE

**No variance will be granted unless it is found that:**

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property*

***rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.***

The Variance application meets criterion (a) for the following reasons:

The applicant submitted the variance application to allow for the ‘as-built’ open deck platform with a 4-foot high railing to remain with a zero front yard setback and associated front yard open space, in lieu of the minimum 15-foot front yard setback and associated 10-foot front yard open space requirement.

Although the single-family dwelling and carport, which do not meet today’s setback requirements, was built in 1939 prior to the adoption of the Hawaii County Zoning Code in 1967, it is considered legal non-conforming.

The owners wish to retain the four-foot high “as built” open deck platform with a four-foot high railing addition to the front of the existing dwelling extending out to the front boundary. Since the property is approximately 4 feet below street level, allowing the open deck platform to remain would allow better accessibility to the single-family dwelling from the carport and ground level. It will also act as a safety net for pedestrians walking along the roadside.

Therefore, based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

**(b) There are no other reasonable alternatives that would resolve the difficulty.**

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the encroachment of the open deck to be constructed into the affected rear yard of the subject property include the following action:

One option would be to redesign the open deck to meet setback requirement and will require the owner to construct a smaller version of the deck which would diminish the functionality of the “as-built” improvement.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

- (c) *The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The "as-built" open deck is a 4-foot high platform with a 4-foot high open railing. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property lines.

Objection letters was received on March, 17, 2014 from Nathan Mattos and Damian A. Mattos stating that the open deck encroaches into the Hawai'i County right-of-way and the wall approximately 8 feet in height obstructs their view from their driveway onto Lele Street. The owner/applicant has since removed the encroachment of the open deck into the Hawai'i County right-of-way and removed the 8-foot wall and was replaced it with a 4-foot high railing. Also, no comments were received from the Department of Public Works regarding any building permit issues with regards to the open deck platform with 4-foot high railing.

Based on the foregoing findings, the approval of this application for variance 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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's plot plan, the "as-built" open deck and railing built upon the subject property (Lot 6) will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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. No permit shall be granted to allow an ohana, or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. The owner shall secure a building permit for the construction of the open deck within six months from the date of this decision.
5. Should the single-family dwelling and carport on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25 (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
6. 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-14-000194.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)

Herbert Ching  
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March 10, 2014

Nathan Mattos  
17B Lele St.  
Hilo, HI 96720

Larry Nakayama  
Planning Director, County of Hawai'i  
101 Pauahi St.  
Suite 3  
Hilo, HI-96720

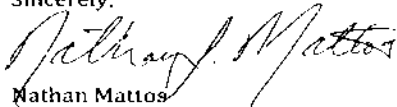
Dear Mr. Nakayama,

This letter is written to oppose the deck built on the house at 23 Lele St in the Piionoua Houselots-3rd Serv. (TMK#3-2-3-024-023).

The deck has been in place for about 3 years and the notice of variance has only now been received. The letter states that the application for variance was filed on January 23, 2014. This appears to be non-compliant. The deck appears to be outside of the owners' property line and on county property. There is a privacy wall on the deck that blocks my view of oncoming cars when I pull out of my driveway at 17B Lele St. thus becoming a safety issue. In addition, there are stairs that provide access to the house and also an entrance, at road level, from the garage to the house, making the deck *not* necessary for safe entry into the house.

Please advise as to how the county is going to handle this situation. If you need any additional information from me, please let me know. I can be reached at 808-938-4999.

Sincerely,

  
Nathan Mattos

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Herbert Ching  
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March 10, 2014

Damian A. Mattos  
17 Lele St.  
Hilo, HI 96720

Larry Nakayama  
Planning Director, County of Hawai'i  
101 Pauahi St.  
Suite 3  
Hilo, HI-96720

Dear Mr. Nakayama,

This letter is written to oppose the deck built on the house at 23 Lele St in the Piihonua Houselots-3<sup>rd</sup> Serv. (TMK#3-2-3-024-023).

The deck has been in place for about 3 years and the notice of variance has only now been received. The letter states that the application for variance was filed on January 23, 2014. This appears to be non-compliant. The deck appears to be outside of the owners' property line and on county property. There is a privacy wall on the deck that blocks my view of oncoming cars when I pull out of my driveway at 17 Lele St. thus becoming a safety issue. In addition, there are stairs that provide access to the house and also an entrance, at road level, from the garage to the house, making the deck *not* necessary for safe entry into the house.

Please advise as to how the county is going to handle this situation. If you need any additional information from me, please let me know. I can be reached at 808-938-4999.

Sincerely,

Damian A. Mattos



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Herbert Ching  
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January 2, 2015

NEIL ABERCROMBIE  
GOVERNOR



DIRECTOR OF HEALTH

2014 MAR 11 PM 2:09

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: March 7, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye ↗  
District Environmental Health Program Chief

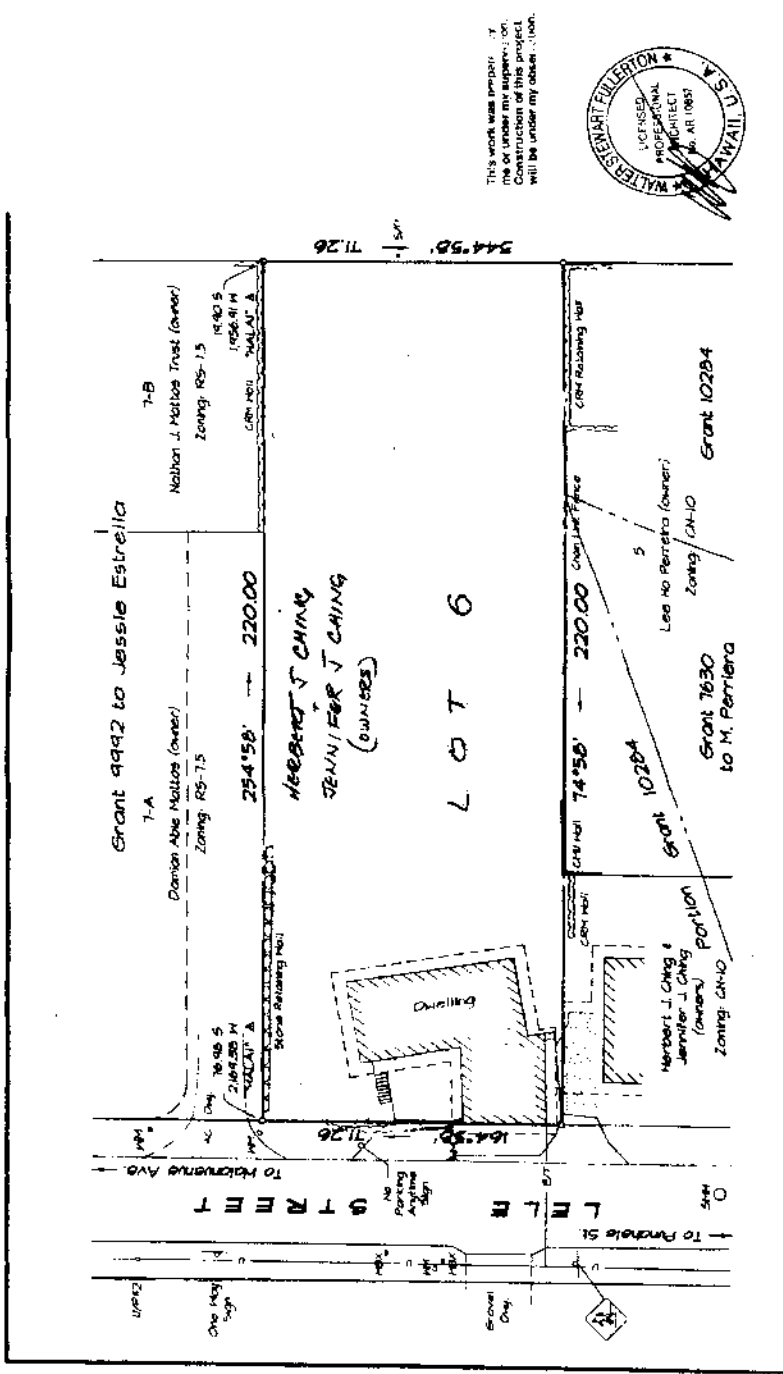
SUBJECT: Application: Variance-VAR-14-000194  
Applicant: HERBERT CHING  
Owner: HERBERT AND JENNIFER CHING  
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,  
Section 25-5-7, Minimum yards, and Section 25-4-44,  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into Front (West) Yard  
Setback)  
Tax Map Key: 2-3-024-023

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

WORD: VAR-14-000194.nj

090454





This work was prepared by me or under my supervision. Construction of this project will be under my observation.

