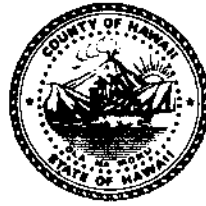


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February 16, 2021

Chandra Fulton  
Chandra's Building Permit Service  
P.O. Box 1601  
Hilo, Hawai'i 96721

Dear Ms. Fulton:

**SUBJECT: Application: Variance – VAR-20-000601**  
**Applicant: CHANDRA'S BUILDING PERMIT SERVICE**  
**Owner: DONGBO JIANG & LIWEI YUE**  
**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 the Front (North) and**  
**Rear (South) Yard Setback.)**

**Tax Map Key: (3) 2-2-038:080 (Lot 6)**

The Planning Director certifies the **approval** of Variance No. 20-000601, subject to variance conditions. The variance will allow for attached workshop/storage to remain with an 18.5-foot front (north) yard setback, in lieu of the required 20-foot front (north) yard setback, it will also allow for the enclosed patio to remain with a 4.43-foot rear (south) yard and an associated roof eave projection resulting with a 7.14-foot rear (south) yard open space in lieu of the required 14-foot rear yard open space requirement. These exceptions are in lieu of the required 20-foot front and rear yard setback and 14-foot rear yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-1, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

On December 4, 2020, a site inspection was conducted by our staff planner, Larry Nakayama and planning inspector, Annalyn Seguban. Also in attendance were Chandra Fulton (Chandra's Building Permit Service), the owners' consultant and the owners, Dongbo Jiang and Liwei Yue. The site inspection revealed that all unpermitted structures have been removed.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 11,128 square feet and is situated in the Waiākea Homesteads House Lots, South Hilo, Hawai'i. The subject property's street address is 40 Maemae Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear and 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 30, 2020. The variance survey map dated September 22, 2020, was prepared by Niels Christensen, LPLS (The Independent Hawai'i Surveyors, LLC), and denotes the position of the attached workshop/storage and enclosed patio constructed into the minimum 20-foot front and rear yard setback, respectively and associated roof eave constructed into the 14-foot rear (south) yard open space.

The survey map shows that the workshop/storage encroaches 1.5 feet (18 inches) into the 20-foot front (north) yard setback. It also shows that the enclosed patio encroaches 12.86 feet into the 20-foot rear (south) yard setback and the associated roof eave encroaches 9.7 feet into the 14-foot rear (south) yard open space.

The encroachment leaves the workshop/storage with a minimum 18.5-foot front (north) yard setback in lieu of the required 20-foot front yard setback. It also leaves the enclosed patio with a 7.14 feet rear (south) yard setback and associated roof eave projection resulting with a 4.43-foot rear (south) yard open space in lieu of the required 20-foot rear yard setback and 14-foot side yard open space requirement. **(See attached survey map – Exhibit A)**

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the following building permits were issued.
  - a. Building Permit 24935 issued on September 21, 1961, for the construction of a single-family dwelling, consisting of 3 bedrooms, 1 bath, living area and kitchen.
  - b. Building Permit 28497 issued on December 13, 1963, for an open lānai.
  - c. Building Permit 39828 issued on October 16, 1968, 1974 for the enclosure of the lānai.
  - d. Building Permit 940071 issued on January 18, 1994, for the construction of a workshop and storage to existing dwelling. Permit finalized on February 13, 1995.

**7. Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated December 4, 2020: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. No comments received from the Department of Public Works Building Division.

8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on November 17, 2020, and December 1, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 25, 2020.

**9. Comments from Surrounding Property Owners or Public.**

A letter of concern to the variance was received from June Villanueva on December 4, 2020; she requested that all unpermitted structures be removed. As mentioned earlier, a site inspection conducted by the Planning Department revealed that all unpermitted structures have been removed. She has also stated that she believes that an unpermitted structure has been built over the cesspool; as stated earlier, all unpermitted structures have been removed and comments received from the State Department of Health states: "The Health Department found no environmental health concerns with regulatory implications in the submittals." With regards to the waterline being tapped from another property, this concern should be brought to the attention of the Department of Water Supply. Lastly, with regards to the on-street parking issue, this concern should be brought to the attention of the Department of Public Works - Road Division.

10. **Time Extension:** The applicant's variance application was acknowledged by letter dated November 16, 2020, 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 February 19, 2021.

**GROUND FOR APPROVING VARIANCE**

**Special and Unusual Circumstances**

- (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 owner/applicant submitted the variance application to address or resolve the encroachment of the attached workshop/storage into the 20-foot front (north) yard setback, the enclosed patio into the 20-foot rear (south) yard setback and associated roof eave into the 14-foot rear yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the workshop/storage constructed in 1994, nearly 26 years ago and enclosed patio constructed in 1968, nearly 52 years ago, subsequent construction permits were issued and closed under valid building permit by the County for the existing structures. It also appears that past building permit inspections of the premises, by the affected agencies during construction of the dwelling improvements, did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the subject property.

**Alternatives**

**(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 building encroachments constructed into the affected yard of the subject property include the following actions:

To remove the building encroachments and/or redesign the existing workshop/storage and enclosed patio denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the enclosed garage was in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining rear property, which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Because the encroachment is also 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; therefore, there are no reasonable alternatives to resolve the encroachment issue.

Both alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

### **Intent and Purpose**

- (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.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

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. The workshop/storage has been in existence for approximately 26 years and the enclosed patio has been existence for approximately 52 years, both were constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request 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**

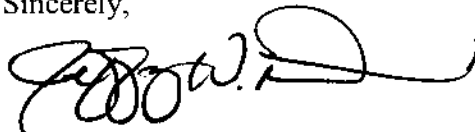
Based on the variance application's survey map, the workshop/storage and enclosed patio, built upon the subject property ("LOT 6") will not meet the minimum front (north and rear (south) yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 Hawai'i 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. Should the existing workshop/storage and enclosed patio 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.
4. An "Ohana" or Farm Dwelling permit shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, Zoning or State law, which may change from time to time.
5. Future or new building improvements and permitted uses shall be subject to State laws 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 this Variance, VAR-20-000601.

Sincerely,



*FK*  
ZENDO KERN  
Planning Director

LHN:jaa

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Enclosure: Exhibit A- Site Plan

cc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)  
Anna Seguban, Zoning Inspector

