

Planning Department

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye
Mayor

Norman K. Hayashi
Director

Tad Nagasako
Deputy Director

CERTIFIED MAIL

October 30, 1991

Martin & Edith Esteban
410 Haili Street
Hilo, HI 96720

Dear Mr. & Mrs. Esteban:

Variance Application (V90-39)
PETITIONER: MARTIN AND EDITH ESTEBAN
Variance from Front Yard, Clearspace and Nonconforming
Use Requirements of the Zoning Code
TMK: 2-3-21:60

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the reconstruction and expansion of a nonconforming (as to setback) carport where it would have a 3 1/2 ft. front clearspace (due to future street widening) in an RS-7.5 zone which requires a 15 ft. frontyard and 10 ft. front clearspace. The subject property is 5340 sq. ft. in area, identified by Tax Map Key 2-3-21:60 and is located on the north (Hamakua) side of Haili Street, 350 ft. southwest (mauka) of its intersection with Laimana Street in the Halai Tract of the City of Hilo.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the applicants of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The lot is smaller (5340 sq. ft.) than the current minimum 7500 sq. ft. allowed today, and the dwelling is also relatively

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small, being approximately 1200 sq. ft. in area exclusive of the one car carport (10' by 21').

The west side yard is already 3 1/2 ft. and the east side yard is 8 ft. and the rear yard cannot be readily accessed by autos.

The front yard in this case is required to be 15 ft. with 10 ft. clearspace. Before it was recently torn down, the long-existing single carport had 8 1/2 ft. of clearspace. The double carport as proposed would have kept the 8 1/2 clearspace in lieu of the required 10 ft. The variance request would expand the area of the non-conforming use by approximately 200 square feet.

Although the Zoning Code, Section 25-79, specifically states "A non-conforming use may be enlarged within the building it occupies, but shall not be enlarged or increased to occupy a greater area of land . . .," the long-existing non-conforming size of the lot calls for a variance from that restriction to allow what is today a virtual necessity for a single family dwelling--a two (2) car carport.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which obviously interferes with the best use or manner of development of the property.

ALTERNATIVES

Today, a carport is a necessary part of a dwelling by modern standards. Provision for two (2) cars is not either uncommon nor considered extravagant. Because of the long-existing non-conforming lot size and building placement, there is no space readily available for a 2-car carport. Thus, other reasonable alternatives do not exist.

However, because the homesite is on Haili Street, which is designated for future street widening, and because the limited space compels "backing out" onto the street for egress, conditions are imposed in the granting of this variance permit to decrease the possibility of traffic hazards at the time of street widening. The applicants are also willing to remove the carport when road widening occurs in the future.

INTENT AND PURPOSE

The intent and purpose of the setback requirement is to afford an adequate amount of open space, air, light, circulation and related spatial considerations between adjacent and nearby properties. Front yards have additional considerations for traffic safety, as warranted by the road traffic situation.

In this case, the fronting element is Haili Street, a busy collector especially at the beginning and end of school days because of the proximity of Hilo High and Hilo Intermediate Schools.

Driving forward out of a driveway is safer than backing out because it affords better visibility and control. However, because of limited space, backing out is the only method of egress from the houselot.

The applicants are aware that their proposal, if granted, would place the carport in close proximity to the sidewalk and roadway especially when road widening occurs in the future. Therefore, they have stated their willingness to absolve the county of any responsibility for traffic-caused injury or damage occurring as a result of the structure's permitted proximity to the street.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

Therefore, the Planning Director has concluded that this request be approved subject to the following conditions:

1. The applicants, their assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction within the front yard setback distance granted by this variance permit shall be limited to the double carport, 20 ft. wide as described in the application.
3. A building permit for the dwelling must be secured within one (1) year of the effective date of the variance permit and shall be completed within two (2) years thereafter.

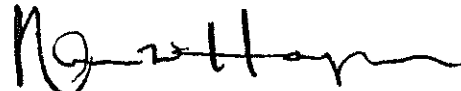
4. Because of the close proximity of the carport to Haili Street, the applicants shall:
 - a) Absolve the County of any responsibility for any damage to the structure occurring from any accidents or adjacent public improvements, repair or maintenance of Haili Street. Acceptance of this variance shall be considered as the applicant's immediate acceptance of this condition.
 - b) Should the County require additional land for Haili Street widening, the applicants shall agree that any land acquisition by the County of the subject property shall be based on unimproved land price assessment which would not include the carport improvements.
 - c) When road widening occurs, the applicants shall remove the carport at their own expense to the extent necessary to conform with the standard front yard requirements at that time.
 - d) Within 90-days of receipt of this variance permit, the applicants shall submit to the County for its review a written provision encompassing these three (3) conditions (a, b and c) to be included in the deed to this property, to run with the land for as long as the carport remains in this location. Upon acceptance of the provision by the County, the applicants shall at their own cost, promptly have the document recorded as part of the deed at the State Bureau of Conveyances and submit a copy of the recorded document to this department.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Planning Director may proceed with declaring this variance null and void.

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If you have any questions on this matter, please feel free to contact us.

Sincerely,



NORMAN K. HAYASHI
Planning Director

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cc: West Hawaii office