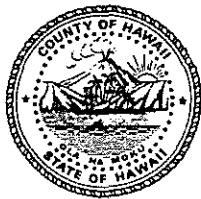


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

#### CERTIFIED MAIL

Z 179 517 469

December 3, 1997

Mr. Kiyoshi Hamakawa  
136 Mauna Loa Street  
Hilo, HI 96720

Dear Mr. Hamakawa:

Variance Permit No. 876 (VAR 97-68)  
Applicant: KIYOSHI HAMAKAWA  
Owner: KIYOSHI HAMAKAWA  
Request: Variance From the Minimum Yards and Permitted Projections Into  
Yard and Open Spaces, Pursuant to Chapter 25, Hawaii County Zoning Code  
Tax Map Key: 2-2-018:042

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow the replacement of an existing carport by the construction of a single story carport to be situated on the subject property with a 3 foot front yard in lieu of the minimum fifteen (15) feet front yard and a four (4) foot side yard in lieu of the minimum eight (8) feet required by Article 5, Division 2, Section 25-5-26, Minimum yards, (a), (1), (A), and (B), and with a clearspace of 0.75 feet in lieu of the minimum ten (10) foot front yard and four (4) foot open space requirements, respectively, pursuant to Section 25-4-44 (a), (1), Permitted Projections Into Yards and Open Spaces.

#### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum yards and associated open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property's address is 136 Mauna Loa Street containing 4226 square feet, is Lot 6 and Lot 6A, Being a Portion of Land Court Application 385, Waiakea, South Hilo, Island and County of Hawaii. The property, containing 4226 square feet, is zoned Residential-Duplex (RD-3.75) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).
2. The original dwelling and related site improvements were constructed in 1935. Subsequent to the construction of the building improvements in 1935, building permits were issued in 1970 and in 1976 by the Department of Public Works (DPW), Building Division in Hilo, B No. 45769 for the installation of vinyl siding to the exterior of the dwelling, and B No. 762746 to renovate the existing living room, bedroom, bathroom and kitchen.
3. The site plan drawing, drawn to scale, identifies the location of the "EXISTING RESIDENCE" and proposed carport location. The site plan accurately denotes the location of the existing and proposed carport within the subject parcel.
4. The original dwelling and the carport were constructed and established on the property in 1935; and, therefore it appears the original dwelling and carport were approved by the County and other affected government agencies. The dwelling and carport were built and lawfully in existence on September 21, 1966, before the Zoning Code was formally adopted by the County in 1967. Therefore, the existing carport and location of parking spaces on the property are non-conforming.
5. The minimum building site area in the RD district is 7500 square feet. Each building site in the RD district shall have a minimum average width of 60 feet, plus 2 feet for each 500 square feet of required building site area in excess of 7500 square feet. The subject property contains only 4226 square feet and has an approximate average width of 50 feet. Therefore, in 1967, the subject TMK parcel became a nonconforming parcel within the RD zoned district.
6. Pursuant to Section 25-4-60, Nonconforming buildings; maintenance, (a), "Any nonconforming building, except as otherwise regulated, may be repaired, maintained, or enlarged provided that any enlargement or addition shall conform in every respect to the regulations for the district in which it is located."

7. The Department of Public Works memorandum dated October 17, 1997, on file states in part:

- "1. Building shall conform to all requirements of code and statutes pertaining to building construction.

The eave overhang within the 4-ft. setback beyond the exterior wall shall be maximum 2-ft. (ref. UBC Sec. 504(b)). This projection shall be a one-hour fire resistive or heavy timber construction, when the projection is more than 1-ft (ref. UBC Sec. 1711).

2. We have no records to show that the section of Mauna Loa Street, fronting the subject property, is a County roadway."

8. The Department of Finance-Real Property Tax memorandum dated October 16, 1997, on file states in part:

"Real Property taxes are paid through June 30, 1998."

9. No objections to the variance application were received from the surrounding property owners. Two (2) telephone calls supporting and endorsing the carport location and replacement were received.

The present owner submitted a site plan which identifies the location of an existing carport and location of the proposed carport within the property containing 4226 square feet. The site plan submitted identifies the distances between the wall and eave of the proposed carport from the affected front yard along Mauna Loa Street and from the Hamakua side property line. It appears the original 1-car open carport was built in the present location during the 1930's.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building improvements, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner 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 subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owner. Alternatives

Mr. Kiyoshi Hamakawa

Page 4

December 3, 1997

available to the owner include relocating the existing dwelling or building the proposed two (2) car carport within the buildable area prescribed by the Zoning Code. The available area on the non-conforming sized lot between the dwelling constructed in 1935 and the front property line limits the location of the proposed carport replacement. The request to widen the existing parking space to accommodate 2-cars challenges the provisions of the Zoning Code which govern building location and the percentage of repairs permitted during a calendar year. The detailed building plans to replace and enlarge the existing carport will not disrupt the function and architecture of the existing dwelling. The proposed carport's proportion and shape would be architecturally compatible and similar to the surrounding dwelling/carport combinations along Mauna Loa Street and within the Villa Franca neighborhood. The proposed carport will meet the minimum side yard requirements when taken from the Puna side property line and rear yard setbacks.

The Planning Department acknowledges there may be other design or building alternatives available to the owner than those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owner when a more reasonable alternative is available by the granting of the subject variance request.

#### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The existing property, dwelling, and carport were created or established on the property before September 21, 1966. The area and size of the subject property and location of the existing carport are "nonconforming". Therefore the proposed carport replacement will not meet all the district regulations for this sized property within the RD zoning district. It appears the original dwelling and carport's location complied with all building codes and setback requirements when it was originally constructed in 1935.

The original carport building was not attached to the dwelling and was located within a portion of the front yard near the right-of-way. Pursuant to a field inspection of the affected property and surrounding older residential properties, it was common practice to attach an open carport to the existing residence or construct a separate carport structure within the right or left corner of the property nearest the right-of-way. Subsequent to the adoption of the Zoning Code in 1967 the original carport building automatically became a non-conforming building; thus the carport and roof eave encroaches within the minimum required front and side yards. In view of similar dwelling/carport combinations within the immediate neighborhood, the proposed replacement of the existing carport building will not depreciate or detract from the character of the surrounding neighborhood. It appears the existing carport's "footprint" and building

encroachments established on the property have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. There were no objections from any surrounding property owners to the proposed variance request. Therefore, it is felt the proposed carport replacement and relocation within the existing property will not detract from the character of the immediate neighborhood or the subdivision. The proposed carport replacement and use will not be considered an increase to the "living area" within the existing property.

The subject variance application was deemed complete on September 15, 1997. Pursuant to numerous discussions with the applicant and letter dated November 10, 1997, an extension of time until December 3, 1997, to render a decision on the subject variance application was mutually agreed upon.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intent and purpose 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.

This variance request is approved subject to the following conditions:

1. The owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance is only from the Zoning Code. The owner, 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 pertaining to the replacement and construction of the proposed carport.
3. The location of the proposed carport to replace the existing carport will not meet the provision of the Zoning Code regarding minimum front and side yards and corresponding permitted projections into yards and open spaces. The approval of this variance allows the existing carport to be replaced and relocated on and within the subject property pursuant to the site plan submitted with variance application.

Mr. Kiyoshi Hamakawa  
Page 6  
December 3, 1997

4. Future building improvements and permitted uses on the subject property 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 this Variance Permit null and void.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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xc: Real Property Tax Office