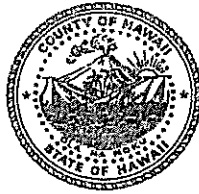


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

July 30, 2003

Mr. and Mrs. Deonicio D. Canda
16-388 Keaau Loop
Keaau, HI 96749

Dear Mr. Canda:

VARIANCE PERMIT NO. 1379 (VAR 03-030)

Applicants: DEONICIO D. CANDIA, ET AL.

Owners: DEONICIO D. CANDIA, ET AL.

**Request: Variance from Minimum Yards and
Open Space Requirements,
Pursuant to Chapter 25, the Zoning Code**

Tax Map Key: 1-6-142:033, Lot 8398

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions stated herein. Variance Permit No. 1379 allows portions the dwelling's carport (Under construction per BP No. 030140) and permit a proposed carport expansion with a minimum 10 feet to 13 feet front yard and allowance for the carport's roof eave according to applicant's variance site plan map/detailed construction plans submitted with the variance application. The variance request is from the Lot 8398's minimum twenty (20) feet front yard and the attendant fourteen (14) feet front yard open space requirement pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

BACKGROUND AND FINDINGS

1. **Location and Zoning.** The subject property, Lot 8398 containing 14,418 square feet, L.C. 1053, is situated at Keaau, Puna, Hawaii.

The subject TMK property is zoned Single-Family Residential (RS-15) and designated Urban "U" by the State Land Use Commission.

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2. **Variance Application-Site Plan**. The applicant submitted the variance application form, supplemental information, tax clearance, and \$250.00 filing fee check on or about April 22, 2003. The applicant's map or site plan drawing is drawn to scale and prepared by the applicant's draftsman. The site plan shows and denotes portions of the dwelling's carport encroach into the lot's front yard and respective front yard open yard spaces.

Note: The variance request does not address the location of the "LOW ROCK MASONRY WALL" along the lot's front boundary line shared with the "RIGHT-OF-WAY".

3. **Carport Building Permit(s)**. According to county building records, the applicant was issued a building permit BP No. 030140 was issued for the carport addition on January 24, 2003. The applicant recently submitted detailed building plans and building permit application to further expand the carport area. The outstanding carport position issues were discovered after BP No. 030140 was issued. It appears that the existing and proposed carport improvements will not meet the minimum yards required by Chapter 25, Zoning. As such, the applicant submitted the variance request.
4. **Agency Comments and Requirements (VAR 02-071)**.

- a. The Department of Public Works (DPW) memorandum dated June 10, 2003, states:

"We have reviewed the subject application forwarded by your memo dated May 13, 2003 and offer the following comments.

Approval of the application shall be conditioned as noted below.

Building permit #030140 (as built) has no status of inspection and #030140 (addition to existing dwelling) has been inspected up to and including framing inspection.

Approval will be given when all outstanding permits receive an ending date for inspections.

Please refer questions regarding building permits to the Building Division at 961-8331."

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- b. Pursuant to a discussion with the State Department of Health (DOH-Hilo Office) on July 30, 2003, the DOH had no comments or objections to the applicant's variance application.
5. **Notice to Surrounding Owners.** The applicant submitted proof of mailing a first notice to a list of surrounding property owners. It appears that the applicant mailed the first and second notice(s) on or about April 22, 2003 and June 18, 2003, respectively.
6. **Comments from Surrounding Property Owners or Public.** No further agency comment were received. No written objection letters from surrounding property owners or general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building or carport encroachment problems were discovered after the original carport building permit was issued and request to expand the carport with another building permit was requested. The applicant or owner(s) are addressing building encroachment issues discovered after the building permit (BP No. 030140) to build the carport addition was issued. The variance application's site plan map was prepared by the applicant's draftsman and denotes the location of the original dwelling and building improvements, "AS BUILT", or proposed. The variance site plan submittals identify the carport encroachments within the property's minimum 20 feet front yard pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of building encroachment issues after a permit to further increase the size of the carport was submitted for agency approval. No evidence has been found to show indifference or premeditation by owner(s) or builder(s) to deliberately create the building encroachment issues. It appears that the existing dwelling's position and area to expand the carport are limited. The issuance of the building permit to construct the original carport addition in January 2003 did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the applicant or current owner(s) to address the encroachment issues include the following actions:

1. Remove or redesign portions of the new dwelling improvements to accommodate the carport location or parking area.

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2. Redesign and relocate the 40 + year old dwelling within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.
3. Consolidate the subject property (Lot 8398) with the right-of-way and resubdivide the property back into like areas and shift or adjust affected yards accordingly to provide minimum building lines, minimum yards, and other associated open space requirements.

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 these small building encroachments into the minimum yard and attendant side yard open space requirements will not be physically and visually obtrusive from adjacent property(s) or the existing right-of-way. The original dwelling's position was constructed and established on the lot nearly 40 years ago. The 1974 expansion to the original dwelling area and other recent building additions are limited due to the dwelling's relationship or orientation with the "Right-of-Way". Design alternatives to change the dwelling's position or/and relocate the carport elsewhere on the property are restrictive and limited. A perimeter rock wall has been constructed on the property along the front property line. Access to the carport or buildable area adjoining permitted carport improvements allowed in January 2003 is limited. The proposed carport or further expansion of the carport being constructed will not depreciate or detract from the character of the surrounding neighborhood and the existing and surrounding land patterns. No objections from the surrounding property owners or public were received. Therefore, it is felt that the proposed dwelling carport expansion and small encroachments of the open carport into the affected front yard will not detract from the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated May 12, 2003 and additional time to verify agency requirements was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than August 1, 2003.

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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VARIANCE DECISION AND CONDITIONS

The variance request is approved subject to the following conditions:

1. The applicant/owner(s), 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 proposed carport addition to the existing dwelling/carport improvements encroach into the yard and attendant open space required by Chapter 25, the Zoning Code. These encroachments are identified on a site plan map dated submitted with the variance application. The approval of this variance allows the existing and proposed carport addition located within the respective front yard and attendant front yard open space requirements to be constructed on Lot 8398 or subject TMK property in accordance with the approved variance site plan map or approved detailed construction plans. BP No. 030140 issued for the carport addition and building permit to expand the carport addition and any additional electrical and mechanical permits required for the carport improvements identified on the variance site plan map shall be closed or "finaled" by the DPW-Building Division before any change in property title or sale of the property.
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 building additions or improvements and permitted uses on Lot 8398 or the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

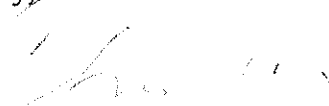
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:pak

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xc: Real Property Tax Office - Hilo
Planning Dept. - Kona