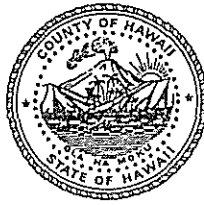


Harry Kim
Mayor



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

December 15, 2004

Ms. Janet Schmuckal
P. O. Box 234
Papaikou, HI 96781

Dear Ms. Schmuckal:

VARIANCE PERMIT NO. 1496 (VAR 04-066)

Applicant: JANET SCHMUCKAL

Owner: RUTH E. BENTON

**Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning**

Tax Map Key: 2-7-026:015, Lot 31

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 1496 permits the conversion of the open carport into a living area and proposed dwelling additions. The existing carport or proposed living area is located approximately 4.5 feet + from affected side boundary line pursuant to the applicant's variance site plan map drawing. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 31 containing 5568 square feet, is within Moirton Camp, and situated at Papaikou, South Hilo, Hawaii. The TMK property's street address is 27-205 Road B.

The non-conforming sized property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the State Land Use Commission.

Hawai'i County is an equal opportunity provider and employer.

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about July 28, 2004. The variance application and submittals were prepared by the applicant. The site plan map drawing and other submittals denotes the location of the dwelling and carport improvements, "AS-BUILT", and plans and recent photographs of the 13' x 28' building improvements.

The applicant's background report states in part:

"We are asking for a variance to enclose the carport after the fact and turn it into a bedroom addition with a bathroom. When Ruth Benton became the new owner on 5/14/04, she was unaware that the carport was enclosed without a permit."

3. **Agency Comments and Requirements-(VAR 04-066)**:

- a. The Department of Public Works (DPW) memorandum, dated September 2, 2004, states in part:

"We have reviewed the subject application forwarded by your memo dated August 16, 2004 and oppose the approval of the application for the reasons noted below.

Building permit no. 020533 and plumbing permit M970529 for the subject dwelling have no status of inspection.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear."

- b. The State Department of Health (DOH) memorandum, dated October 11, 2004, states:

"Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of all existing wastewater systems."

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4. **Notice to Surrounding Property Owners.** According to the applicant's submittals, it appears that the applicant mailed first and second notice(s) on or about August 12, 2004 and August 26, 2004, respectively.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written objections from the surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the encroachment issues were revealed during a recent inspection by the Planning Department and Notice of Violation and Order (ZCV 040041). The applicant, on behalf of the current owner, is trying to resolve the building encroachment issues. The variance application's site plan map and other submittals were prepared by the applicant. The variance site plan map shows that portions or position of the original open carport position was "non-conforming. It appears that the previous owners or building enclosed the original open carport and expanded the carport into 13' x 28' dwelling addition (living area).

No evidence was found showing premeditation by the applicant or current owner to deliberately create or intentionally allow the dwelling to be built. It appears that the original dwelling and open carport improvements were constructed prior to 1967.

ALTERNATIVES

Alternatives available to the applicant or current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove the dwelling encroachments or relocate the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 31 with adjoining lot and resubdivision of the resulting consolidated property to modify affected property lines and adjust minimum yards for the dwelling.

INTENT AND PURPOSE

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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 the dwelling encroachments constructed into affected side yard are not physically or visually obtrusive from adjoining property or right-of-way. Portions of the building "footprint" or dwelling addition was constructed prior to 1967 and utilized as a carport. It appears the original dwelling's carport encroachments were established within the minimum yards prior to 1967. The expansion of the carport or change from a carport to "13' x 28' addition or enclosed living area was not detected until a complaint was received by the Planning Department. The current owner is trying to address the building issues. Given the history and character of the this subdivision and neighborhood, it is felt that the original and recent building additions have not affected or severely altered the character of the subdivision and surrounding land patterns. Therefore, it is felt that the dwelling encroachments within the affected yards will not detract from the character of the immediate neighborhood or subdivision.

The subject variance application was acknowledged by letter dated August 16, 2004. Additional time to incorporate submittals from the applicant and complete the variance background was necessary. The applicant agreed to an extension of time to render a decision on subject variance to November 30, 2004.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 13' x 28' addition on the subject TMK property or Lot 31 will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum open space requirements according to the variance site plan map and other submittals. The approval of this variance allows dwelling encroachments and building positions identified on the variance site plan map or 13' x 28' dwelling addition to remain, "AS BUILT", on the subject TMK property (Lot 31).

The applicant or current owner shall confer with DPW-Building Division in Hilo and any additional building permits for the 13' x 28' carport conversion or addition to the dwelling. The outstanding building permits and construction permits issued to the subject TMK property shall be "finaled" prior to any future sale of the property.

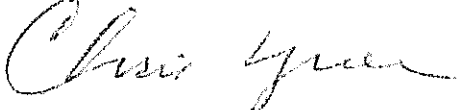
The applicant or current owner shall confer with the Planning Department-Zoning Inspector to address the "corrective action" stipulated by Planning Department letter dated June 29, 2004 and verify in writing that corrective action has been completed.

4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 31), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses 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

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cc: Real Property Tax Office - Hilo
Planning Dept. - Kona
Zoning Inspector-Hilo