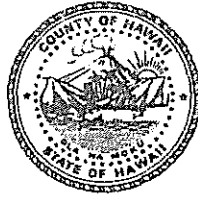


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

December 8, 2006

Mr. Norbert Correia
237 Waikahe Road
Hilo, HI 96720

Dear Mr. Correia:

SUBJECT: VARIANCE-VAR 05-061
Applicant: NORBERT P. CORREIA
Owner: MICHELE MARIE COSTA
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 2-7-026:014, Lot 30


During a routine check of our variance log and files, we note the Tax Map Key number identified on your original variance application "2-7-062:014" and the sixth line of "SUBJECT:" in the subject heading of the original letter approving your variance application dated April 10, 2006 reads as follows: "**Tax Map Key: 2-7-062:014, Lot 30**". The tax map key number(s) cited in your original variance application dated June 23, 2005, heading of the letter dated August 10, 2005 acknowledging your variance application, and heading of the original variance letter dated April 10, 2006 approving your variance application should be corrected to read "**Tax Map Key: 2-7-026:014, Lot 30**".

In addition, the first line following "SUBJECT:" on page 1 of Variance Permit letter dated April 10, 2006 should be changed to read as follows: "**VARIANCE-VAR 05-061**" in accordance with recent changes referring to variances or naming of variance files maintained in this office. As such, the above subject heading shall supersede and replace the original subject heading and tax map key numbers cited in the original letter dated April 10, 2006 approving your variance request or application.

Mr. Norbert Correia
Page 2
December 8, 2006

We apologize for this oversight and any inconvenience or confusion caused by these changes.

Sincerely,

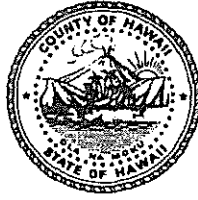


CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-Hilo

Harry Kim
Mayor



Christopher J. Yuen
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County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
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April 10, 2006

Mr. Norbert P. Correia
237 Waikahe Road
Hilo, HI 96720

Dear Mr. Correia:

VARIANCE PERMIT NO. VAR 05-061
Applicant: NORBERT P. CORREIA
Owner: MICHELE MARIE COSTA
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 2-7-062:014, Lot 30

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. 05-061 permits a carport addition to existing "non-conforming" carport situated on Lot 30, "AS-BUILT", with a minimum 1.25 feet front yard from the Lot 30's boundary line along "ROAD B" to approximately minimum 1.68 feet front yard from Lot 30's boundary line along the "STATE RIGHT OF WAY" in lieu of the minimum 15 feet side yard(s) required pursuant to the site plan or "PLOT PLAN" submitted with the variance application. The variance is from the subject TMK property's minimum front yard(s) pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(A), 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 30 containing 4381 square feet, is within "Moirton Camp", Papaikou, South Hilo, Hawaii.

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

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about June 23, 2005. The variance application's site plan map is drawn to scale. The variance site plan map denotes portions of the "EXISTING DWELLING/EXISTING CARPORT" were constructed on "LOT 30" before 1967 and into the State owned Right-of-Way fronting "LOT 30" or subject TMK property. The applicant is proposing to remove the carport encroachment within the Right-of-Way and variance to permit a carport extension included matching roof eave according to the site plan map.

The applicant's background states in part:

"The Applicant proposes to cut off the portion of the existing garage that extends in the Hawaii Belt Road right-of-way (approximately 167 square feet) and then extend the garage toward its northern property line (along the cul-de-sac) approximately 9 feet to share the same building line of the dwelling which is approximately 2 feet from the front property line formed by the "hammerhead" terminus of the cul-de-sac."

Note: It appears that the original or "existing" garage or carport attached to the dwelling built circa 1939 was "reconstructed" in accordance with a building permit issued by the County in 1968. The variance request does not address the location or position of any fencing and/or landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Recent County building records show Building Permit No. 981042, Electrical Permit-E980893, and Mechanical-M980681 were issued to subject TMK property circa 1998. According to an earlier Planning Department letter, the existing dwelling and attached garage were built before 1967. Subsequent building and associated construction permits issued after 1967 were for repairs only.

4. **Agency Comments and Requirements-VAR 05-061:**

- a. The Department of Public Works (DPW) memorandum dated September 9, 2005 states:

"We have reviewed the subject application forwarded by your memo dated August 18, 2005 and oppose the approval of the application for the reasons noted below.

Mr. Norbert P. Correia
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April 10, 2006

The building and electrical permits (981042 & E980893) for the subject dwelling were never finalized.

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.

The projections do not meet setback requirements and should be corrected.

No openings in the exterior wall are permitted less than 3 feet from the property line.

The exterior wall or projections shall be constructed to provide a one-hour fire(sic) resistive occupancy separation.

All projections shall comply with the 1991 edition of the UBC, Section 1711. Projections.

Questions may be referred to the Building Division at 961-8331.”

- b. No comments were received from the State Department of Health (DOH).

Note: According to previous County BP (Remarks), “NEW SEWER CONNECTION REQUIRED-PER WASTEWATER”.

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on June 23, 2005 and September 1, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about August 26, 2005.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

Mr. Norbert P. Correia
Page 4
April 10, 2006

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, submitted the variance application to address the status of a carport encroachment within a State owned right of way and replace the carport addition to replace the carport encroachment being removed. The variance application's site plan map submitted by the applicant denotes the position of the existing dwelling/carport, "AS BUILT", on "LOT 30" and proposed carport addition. The applicant became aware of building or carport position issues after selling the property to the current owner. No evidence has been found to show indifference or premeditation by past owners or builders to deliberately create or intentionally allow these building encroachments to be built within the State owned Right-of-Way (Note: It appears the 35 + year old carport or encroachment issues within the State owned Right-of-Way were recently disclosed) Essentially, the applicant, on behalf of the current owner, is seeking the variance to construct the carport addition to address the carport encroachment issue within the Right-of-Way and carport replacement.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Redesigning or relocating the dwelling/carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 30 with adjoining Rights-of-Way and resubdivision to modify property lines or adjust minimum yards.

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 the original dwelling was constructed on Lot 30 nearly 66+ years ago. The garage improvements within the State owned Right-of-Way will be removed by the applicant or current owner; and, the variance is being sought to allow the carport addition to replace the carport encroachments. Therefore, it is felt that the proposed carport addition within the affected front yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

Mr. Norbert P. Correia
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April 10, 2006

The subject variance application was acknowledged by letter dated August 18, 2005 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to April 14, 2006 to complete the variance background report and render a decision on the subject variance.

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.
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. The proposed carport addition to the existing "non-conforming" carport within the affected front yards of "LOT 30" will not meet the minimum front yard(s) pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "CARPORT EXTENSION" to be built on the subject TMK property or "LOT 30" in accordance with the variance site plan map or "PLOT PLAN" in subject variance file. The portion of the carport within the State owned Right-of-Way shall be removed by the applicant or current owner(s) prior to or on April 30, 2007 or further sale of the property. The applicant or current owner(s) shall secure a building permit to construct the carport addition on or before April 30, 2007.

Mr. Norbert P. Correia

Page 6

April 10, 2006

4. The current owner(s) shall address the status of Building Permit-981042 and Electrical Permit-E980893 issued to subject TMK property by the DPW-Building Division (Hilo). The "open" building and electrical permit and any other construction permits issued to the subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to transfer of property title or sale of the property.
5. 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.
6. Future or new building improvements and permitted uses 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,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Hilo)