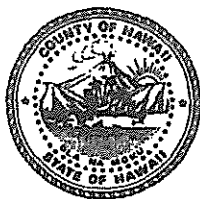


Harry Kim
Mayor



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

June 14, 2006

Mr. and Mrs. James C. Osterberg, Jr.
87-3203 Guava Road
Captain Cook, HI 96704

Dear Mr. and Mrs. Osterberg:

VARIANCE PERMIT-VAR 06-023

Applicants: JAMES C. OSTERBERG, JR., ET AL.

Owners: JAMES C. OSTERBERG, JR., ET AL.

Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 8-7-020:008, Lot 197

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-023 subject to variance conditions. The variance permits portions of the dwelling's carport to remain on Lot 197, "AS-BUILT", with a minimum 12.31 feet to minimum 13.83 feet +/- front yard and minimum 7.54 feet side yard, in lieu of minimum 15.00 feet front yard and minimum 8.00 feet side yard, respectively, according to the variance site plan map dated August 15, 2005. The variance is from the TMK property's minimum front yard and minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77 Other regulations.

BACKGROUND AND FINDINGS

1. **Location**. The subject property, Lot 197 containing 7500 square feet, is within Kona Paradise Subdivision, being portions of lands covered by Mahele Award Number 25, Royal Patent Number 7739 to Nahua, is situated at Kaohe 4th, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "A" 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 March 7, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, dated August 15, 2005, denotes portions of a "CARPORT" were constructed within the property's minimum 15 feet front yard and minimum 8 feet side (north) yard of "LOT 197" or subject TMK property.

The applicant's letter dated March 4, 2006 states in part:

"This is a request for the structure to remain "as built". The current structure (a carport) is with a projection of 2.69' into the 15' front yard set back and a projection of 0.46' into the 8' side yard set back. The request is based on special circumstances that are applicable to this property as set forth below.

In August of 2005 we offered a DROA for the purchase of this newly constructed, finaled home. The previous owners (sellers) had purchased the [vacant] parcel with the pins secured (cemented) and the foundations already existing. As part of our DROA we requested that a survey be performed, in addition to the staking pins located on the property. During escrow the survey was completed and we were informed that the NE corner pin was cemented incorrectly with respect to the property lines."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of rock walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (015327) was issued to subject TMK property. It appears that the Dwelling and 2-Car Carport on "LOT 197" was built pursuant to this building permit issued in 2001 and completed or "finaled" on August 3, 2005.

4. **Agency Comments and Requirements-VAR 06-023:**

- a. The Department of Public Works (DPW) memorandum dated April 18, 2006 states in part:

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"We reviewed the subject application and we have no comments or objections."

The attached DPW-Building Division memorandum dated April 17, 2006 states in part:

"We have no comments or objections to the application."

- b. The State Department of Health (DOH) memorandum dated April 19, 2006 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

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 March 3, 2006 and April 25, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 7, 2006.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or the general public were received. The following support letter was received:
- 6a. Letter from Kona Property Owners Association (KPPOA) dated May 5, 2006 supporting the variance request and application.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicants submitted the variance application to address the carport encroachments within the property's minimum front yard and side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "CARPORT" and "HOUSE" improvements, "AS BUILT", on "LOT 107". The encroachment issues within the minimum yards were disclosed during escrow. No evidence has been found to show indifference or premeditation by the previous owners or builders to deliberately create or intentionally allow these carport encroachments to be built.

The dwelling and detached carport were constructed according to a building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 2001 and 2005, the carport encroachment within the property's front yard and side yard went unnoticed.

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ALTERNATIVES

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

1. Remove the building encroachments or redesigning or relocating the detached carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 197 with adjoining Lot 195 (TMK: 8-7-020:009) and right-of-way (Rod "G") 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 subject carport was constructed approximately 5 years ago within the respective minimum front yard and side (north) yard of Lot 197; and, the detached carport is not physically and/or visually obtrusive from the adjacent property (Lot 195) or right-of-way (Road "G"). It appears that the 5 +/- year old carport encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the property's front yard and side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 29, 2006 and additional time to send the second notice was requested by the applicants. The applicants agreed for an extension of time to complete variance background report and render a decision on the subject variance to June 15, 2006.

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:

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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. Portions of a "CARPORT" on "LOT 197" will not meet the subject TMK property's minimum 15 feet front yard and minimum 8 feet side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated August 15, 2005. The approval of this variance permits the "CARPORT" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 197" according to the variance site plan map dated August 15, 2005.
4. 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-(Kona)
Chuck Savell, Chairman, KPPOA