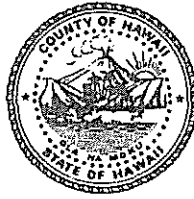


Harry Kim
Mayor



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 27, 2006

Mr. Ronald A. Manuel
P. O. Box 496
Kapaau, HI 96755

Dear Mr. Manuel:

VARIANCE-VAR 06-070

Applicant: RONALD A. MANUEL
Owners: RONALD A. MANUEL. ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 5-4-010:026, Lot 10

After reviewing your application, the Planning Director approves Variance-VAR 06-070 subject to variance conditions. The variance permits portions of a garage-storage room addition to remain on Lot 10, "AS-BUILT", with a minimum 6.5 feet side yard and attendant minimum 3 feet side yard open space in lieu of minimum 10.00 side yard and minimum 5.00 feet side yard open space according to the variance site plan map submitted with the variance application. The variance is from the TMK property's minimum side yard and minimum side yard open space required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(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 TMK property containing 15, 000 square feet is Lot 10 of BLOCK "G", "KYNERSLEY ROAD TRACT 3", File Plan 660, and being a portion of Grant 1544, and situated on the west side of Union Mill Road at Puehuehu and Laaumama, North Kohala, Hawaii. The property's street address is 54-370 Union Mill Road.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The owner's representative submitted the variance application, attachments, and filing fee on or about October 20, 2006. The variance application's site plan map is drawn to scale and was stamped by a licensed professional architect. The variance site plan map and other drawings indicate portions of a permitted carport was enclosed and changed into a garage. Portions of the garage and storage room are within a minimum side yard.

The applicant's background states in part:

"The building is an old plantation home built in 1957. My family moved in next door (54-372 Union Mill Road) in 1979. Since I have lived next door I have witnessed several "remodels" to the house. I purchased the property at 54-370 Union Mill Road in 1997. The building structure to this day has remained basically unchanged at the north side of the boundary."

Note: The variance site plan map does not identify the address the location or position of any walls, fencing, and landscaping, etc. along or straddling common boundary lines shared with adjoining property.

3. **County Building Records:**

Real Property tax records indicate the dwelling was constructed in 1957. County building records show Building Permit (906590), Electrical Permit (E905988), and Mechanical (M915005) or Plumbing Permit were issued and converted into the garage/storage by a previous owner. It appears that these permits were "COMPLETED" or "CLOSED" by the DPW.

4. **Agency Comments and Requirements-VAR 06-070:**

- a. The Department of Public Works (DPW) memorandum dated September 14, 2006 states in part:

"We reviewed the subject application and our comments are as follows:

Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).

The attached memorandum dated September 14, 2006 states in part:

"We opposed the approval of the application for the reasons noted below.

Others: Existing carport appears to be enclosed on plans submitted. No records on file for enclosure."

- b. The State Department of Health (DOH) memorandum is dated September 26, 2006. (Refer to DOH memorandum in subject variance file).
- 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 September 13, 2006 and October 10, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 17, 2006.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letter was received:
- 6a. Letter dated October 23, 2006 from Regina Gantala and comments regarding a "water issue" or rainwater "runoff" from the garage's roof onto the subject TMK property along the affected side line was received by the Planning Department on October 25, 2006.

Note: The owner's submitted a follow-up letter dated December 13, 2006 which states in part:

"Per Letter you received from Regina Gantala, dated October 23, 2006 regarding her concerns about the variance application. With response to her letter, I will be installing gutters and downspouts that will move water away from the property line. I hope this action is satisfactory and will mitigate any concerns that Regina has about water runoff onto their property.

Attempts to contact Regina Gantala to discuss the matter further has (sic) met with no response."

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant or current owners submitted the variance application to address or resolve the garage encroachment into a minimum 10 feet side yard. The variance application's site plan map denotes the location of the dwelling/garage position and other site improvements, "AS BUILT". It appears that the current owners became aware of the building encroachment issue after they purchased the original dwelling/garage from the previous owner.

It appears that the garage was originally permitted as a carport and other associated construction permits issued to subject TMK property circa 1990. It appears that carport was converted into a garage between 1990 and 1997; and this "conversion" or building position issue was not disclosed to the current owners when they purchased the premises in 1997.

ALTERNATIVES

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

1. Remove the building encroachments or redesigning or relocating the dwelling' garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of property (Lot 10) with adjoining lot (TMK: 5-4-010:027, Lot 11) 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 garage encroachment constructed approximately 15 + years ago within the minimum side yard and attendant side yard open space were recently detected after plans were submitted for a building addition by the current owners. It appears that the original carport's position or conversion from a carport to garage is not physically and/or visually obtrusive from the adjacent property (Lot 11) or detectable from the right-of-way (Union Mill Road) fronting the property. It appears that the original 16 year old carport addition did not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these 16 + year old building encroachments into the property's affected side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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The subject variance application was acknowledged by letter dated September 7, 2006 and additional time to consider comments received from an adjoining property owner was necessary. The applicant or current owner(s) requested additional time to contact the property owner(s) and agreed to an extension to complete the variance background report and render a decision on the subject variance to December 29, 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:

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 the dwelling's garage located on "LOT 10" will not meet the minimum side yard and minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "carport" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 10" according to variance and variance site plan map in subject variance file.

The applicant or current owners shall secure a building permit to convert the "open" carport/storage to garage/storage including additional gutter and downspout improvements on or before June 1, 2007. Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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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 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)
-- Regina Gantala