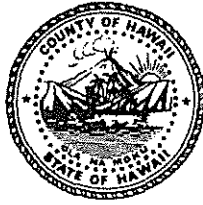


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

June 19, 2009

Ms. Maija Cottle
225 Terrace Drive
Hilo, HI 96721

Dear Ms Cottle:

SUBJECT: VARIANCE-09-013

Applicant: Maija Cottle
Owners: Maija Cottle and Kathleen Capachi
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-77, Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-5-031:008 (Lot 21)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-013 (VAR 09-013) subject to variance conditions. The variance permits the proposed carport to be constructed upon Lot 21 with a minimum 2 feet 6 inch minimum front yard open space along **Terrace Drive** in lieu of the required minimum 14 feet front yard open space pursuant to the plot plan submitted to our office on April 8, 2009. The variance is from the subject property's minimum front yard minimum front open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-77 Other regulations, 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, consisting of approximately 10,003 square feet of land, is situated within the Kaumana Terrace Subdivision. Kaumana, South Hilo, Hawai'i. The subject property's street address is 225 Terrace Drive. The subject property is zoned Single Family Residence – 10,000 square feet (RS-10) by the County and designated Urban or "U" by the State Land Use Commission (LUC).

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2. Variance Application-Site Plan. The owner submitted the variance application, attachments, and filing fee on April 8, 2009 and other submittals related to the variance request and variance application. The variance application's plot plan map is drawn to scale and denotes that portions of the proposed carport to be constructed into the minimum 20 feet front yard setback and minimum 14-foot wide front yard open space.

3. County Building Records:

Hawaii County Real Property Tax Office records indicate that a building permit (29595) was issued on July 20, 1964 for the construction of a 3 bedroom and 2 bath Single Family Dwelling. Building Permit (38738) was issued on May 21 1968 to allow for the conversion of a garage into a den and utility room.

4. Variance Application (VAR 09-008)-Agency Comments and Requirements:

a. The State Department of Health (DOH) memorandum dated May 12, 2009 states:

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

b. No comments have been received from the Department of Public Works (DPW) as of this date.

5. Notice to Surrounding Property Owners. A copy of first notice and second notice sent by the applicant via USPS to surrounding property owners and mailing certificates was submitted to the Planning Department. According to these submittals the first and second notices were mailed via the USPS on April 23, 2009 and May 17, 2009 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 15, 2009.

6. Comments from Surrounding Property Owners or Public: No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to allow for the construction of a garage within the property's minimum 20 feet front yard. The variance application's plot plan denotes the location of the proposed garage upon "Lot21". The site plan shows the

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existing dwelling is 12 feet from the left property line and 6.4 feet from the right property line. The placement of the existing dwelling and the topography of the rear portion of the property make it difficult and impractical to locate the garage in these areas.

The original garage was converted to a den in 1968 approximately 41 years ago.

Due to concerns regarding the structural mass of a garage to be situated so close to the front property line, the approval of this variance modifies the applicant's original request by permitting the construction of a carport only, which will not permit any walls or other similar opaque features within the 20-foot wide front yard setback.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the proposed carport encroachments constructed into the affected front yard and open space of the subject property include the following actions:

Redesign or relocate the proposed carport upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code

As an alternative to the variance request the applicant/owner considered locating the garage in the rear of the property. The owner stated that *"Due to the topography of the rear of the parcel this alternative would not be reasonable and feasible. The front of the property is approximately 10 to 15 feet higher in elevation than the rear. In addition, about two feet from the dog kennel the lot drops off into a pit that is about 5 feet deep (see photos of dog kennel and pit, Exhibit 3). This pit would need to be filled with dirt and leveled out in order to have adequate space for vehicles to turnaround when exiting the garage. In addition, a retaining wall would need to be built along the left property line to prevent the fill dirt from spilling onto the neighbor's property, Adding fill material and a retaining wall would significantly change the natural drainage of the subject property, which would negatively affect the properties to the left (Hilo Side) and rear of the subject property. There are several obstacles (See plot plan, Exhibit 1) that would need to be moved or relocated to accommodate a driveway to the rear of the lot. These include a 4-foot high rock wall and lava stairway between the dwelling and neighbor's rockwall, sewer pipe and cesspool, and dog kennel with concrete slab floor. The neighbor on the left (Hilo) side of the subject property informed the applicant's that there are lava tubes along the left property line near the laundry room and underneath the dog kennel (see exhibit 1). Although the cesspool could be moved, the dog kennel removed and lava tube filled, the rock wall removed, the pit filled, the elevation change*

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graded smooth and a retaining wall built, the cost of doing these things to accommodate a garage behind the house would be unreasonably high and infeasible, and would negatively affect the natural drainage of the property."

Based on these facts and photos, we are in agreement with the applicant/owner that constructing the proposed garage in the rear portion of the parcel would be impractical and the cost would be prohibitive.

Another alternative is to consolidate the subject tax map key property with the road right-of-way (Terrace Drive) fronting the subject property and resubdivide consolidated property to modify property lines and adjust minimum front yard setback. It is felt, that this option is not practical and reasonable.

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.

Therefore, given the circumstances it is our opinion that the current location of the proposed garage denoted on the site plan is not physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners. As such, it is felt that the issuance of this variance as modified will not depreciate or detract from the character of the immediately surrounding properties. It appears that the proposed carport will not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the proposed carport to be constructed into the affected front yard denoted on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The applicant's variance application was acknowledged by letter dated May 7, 2009 and additional time to review the application was required. The applicant granted the Planning department and Planning Director an extension of time for decision on the Variance Application to June 19, 2009.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance request would be consistent with the general purpose of the zoning district and

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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 application is approved subject to the following variance 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 to be constructed upon the subject property ("LOT 21") will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map received April 8, 2009. The approval of this variance permits the proposed carport to be constructed upon subject TMK property or "LOT 21" in accordance to the plot plan map received on April 8, 2009
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. The owner/applicant shall construct an open carport, instead of the requested enclosed garage. No walls or other opaque features will be permitted within the required front yard setback and open space
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.

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 09-013 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)