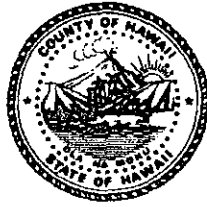


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

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

September 13, 2013

Timothy C. Jahraus, M.D.
'Opu LLC
134 Pu'uhonu Way
Hilo, HI 96720-2067

Dear Dr. Jahraus:

SUBJECT: Application: Variance VAR-13-000140
Applicant: 'OPU, LLC/TIMOTHY JAHRAUS, M.D.
Owners: 'OPU, LLC
Request: Variance from Chapter 25, Zoning, Article 5, Division 10, Section 25-5-106, Minimum Yards, and Section 25-4-44 Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Front Yard Setback)
TMK: 2-3-035:030 (Lot 3)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 13-000140, subject to conditions. The applicant proposes to construct a 14 stall carport approximately along the entire southwest property line. The variance allows for the photovoltaic rooftop carport to project into the front (southwest) boundary approximately 8.5 feet to 9.5 feet in height with a minimum 4-foot front yard setback and associated front yard open space from the front boundary line. This allowance is in lieu of the required minimum 15-foot front yard setback and 10-foot front yard open space requirement. The variance is from the subject property's minimum front (southwest) yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 10, Section 25-5-106 minimum yards and Article 4, Division 4, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 22,356 square feet and is situated within Punhoa 1st and 2nd, South Hilo, Hawai'i. The subject property's street address is 134 Pu'uhonu Way.

2. **County Zoning.** Neighborhood Commercial – 10,000 square feet (CN-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15-feet for front yards; side yards none.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 22, 2013. The variance application's site plan map was prepared by Janel M. Araujo. The variance site plan, undated, denotes the placement of the proposed solar carport into the minimum 15-foot rear yard setback. The request affects the south rear yard setback area.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#921493) was issued on July 28, 1992 for the construction of a Medical Building Complex.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 12, 2013.
(See attached DOH memorandum).
 - b. No comments received from the Department of Public Works Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 17, 2013 and July 3, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 11, 2013.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners of the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated June 28, 2013; and additional time to review the application was required. The applicants granted the Planning Department and the Planning Director an extension of time for decision on the Variance application to September 15, 2013.

ANALYSIS OF GROUNDS FOR APPROVING VARIANCE

No variance will be granted unless it is found that:

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property*

rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.

The Variance application meets criterion (a) for the following reasons:

The owner submitted the variance application to allow for the construction of a 8.5 to 9.5 foot high photovoltaic rooftop carport with a 4-foot minimum front yard setback and associated front yard open space, in lieu of the minimum 15-foot front yard setback and associated 10-foot front yard open space requirement.

The subject property is located approximately 15 feet below street (Komohana Street) grade; therefore, placing the carport toward the center of the property to meet setback requirements would make the structure prominent and more visible to the surrounding property owners and it would diminish the overall functionality of the subject property with regards to ingress and egress purposes within the subject property.

The applicant/owner has stated in its background report:

"We have discussed the issue with an electrical engineer for other photovoltaic installation alternatives, specifically a rooftop installation. The orientation of the roof of our building would limit the number of panels which could be installed and positioning of the panels would also not be as efficient in terms of power production as the support structures we prefer. The support structures we propose allow for installation of up to 30 KW of power generation. The net result of cost of a roof-top installation (in contrast to the proposed support structures) versus benefit to be gained is disadvantageous for our purpose."

Therefore, based on the above information, there are special and unusual circumstances that warrant the location of the photovoltaic rooftop carport and the approval of this variance.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the fencing encroachments to be constructed into the affected rear yard of the subject property include the following actions:

The photovoltaic rooftop carport designed and placed to comply with the setback requirements. However, as mentioned earlier, relocating the proposed carport more toward the center of the property would make the structure more prominent and more visible to the surrounding property owners and hinder the ingress and egress of vehicular traffic within the subject property.

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A no-action alternative would deny the owner the ability to become energy efficient and reduce high energy costs.

Therefore, there are no reasonable alternatives to resolve the difficulty.

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The subject property is located below street (Komohana Street) grade; therefore, placing the proposed carport along the Komohana Street boundary will not compromise the overall open space, air, and light flow between the structures and property lines sought by the zoning code setback requirements.

Based on the foregoing findings, the approval of this application for variance 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 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.

This can be substantiated, to some degree, by the fact that this office did not receive any comments or objections from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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.

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3. No permit shall be granted to allow an ohana, a second single-family or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. The solar carport built upon the subject property ("LOT 3") will not meet the minimum front yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Existing landscape planting to be maintained in a manneregood conducive to their health and and growth.
6. The applicant shall minimize any glare that might be generated or reflect off of the solar panels.
7. 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 variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-13-000140.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

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NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 JUL 15 AM 9:51



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: July 12, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance - VAR 13-000140
Applicant: 'OPU, LLC/TIMOTHY C. JAHRAUS, M.D.
Owner: 'OPU, LLC
Request: Variance from Chapter 25, Zoning, Article 5, Division 10,
Section 25-5-106 Minimum Yards and Section 25-4-44(a),
Permitted Projections into Yards and Open Space
Requirements (Encroachment into the Front (Southwest
Yard Setback)
Tax Map Key: 2-3-035:030, Lot 3

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

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