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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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May 28, 2014

Mr. Niles R. Huey
87-3204 Boki Road
Capt. Cook, HI 96704

Dear Mr. Huey:

SUBJECT: Application: VARIANCE – VAR-14-000195
Applicant: NILES R. HUEY
Owners: NILES R. AND PAMELA HUEY
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, and Section 25-5-76 Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into the East Front Yard Setback and Front Yard Open Space)
TMK: 8-7-015:012; (Lot 29A)

The Planning Director certifies the **approval** of VAR-14-000195, subject to variance conditions. The variance will allow the proposed carport to be constructed on Lot 29A with a 15-foot front yard setback and front yard open space in lieu of the minimum 25 foot front yard setback and associated 19-foot front yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards, (2)(A), Section 25-5-77, Other regulations, and Section 25-4-44, (a) Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 22,384 square feet of land and is located in the Kona Paradise Subdivision, Unit 1, at Kaohe, South Kona, Hawai'i. The subject property's street address is 87-3204 Boki Road.
2. **County Zoning.** Agricultural –5 acres (A-5a).
3. **State Land Use.** Agricultural.
4. **Setback Requirements:** 25 feet for front and rear; 15 feet sides.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on February 19, 2014. The variance application's site plan map drawn to scale denotes the portion of the proposed detached carport to be constructed into the minimum 25-foot front yard setback and 19-foot front yard open space.

The survey map shows that portion of the proposed carport encroaches 10 feet into the front (east) yard setback and 4 feet into the associated front yard open space.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (B2007-0570K) was issued on April 30, 2007, for the construction of a 3-bedroom and 2 ½ bath single-family dwelling.

7. **Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated April 4, 2013. (See attached)
- b. No comments have been received from Department of Public Works – Building Division.
8. **Public Notice.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on February 26, 2014 and March 19, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 12, 2014.
9. **Time Extension.** The applicant's original variance application was received on March 13, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until May 30, 2014.

10. **Comments from Surrounding Property Owners or Public.**

- a. Support letter received on March 4, 2014 from Charles T. Campbell.
- b. Support letter received on March 6, 2014 from Ken Obenski.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (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 criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the proposed detached carport into the 25-foot front (east) yard setback and associated 19-foot front yard open space as required by the Zoning Code.

The site plan shows that the proposed detached carport encroaches 10 feet into the front (east) yard setback and 4 feet into the front (east) yard open space.

The variance application would allow the proposed detached carport to be constructed with a minimum 15-foot front yard setback and associated front yard open space. Pursuant to the applicant's background information, which states:

"The steep grade, does not allow safe access to the home. Building the proposed carport will allow safe access for elderly handicapped father and wife with orthopedic difficulties. Because of the topography of Kona Paradise it would be much more difficult and expensive to start at the 25 foot setback. House on lot 32 has carport with no setback."

It should be noted that due to the steep incline of the Kona Paradise Subdivision, other similar-type variances have been granted in the past.

Therefore, along with the unusual topography of the subject property and the placement of the proposed carport, special and unusual circumstances exist on the subject property which would interfere with highest and best use of the subject property.

Alternatives

(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 address the building encroachments constructed into the affected front yard and open space of the subject property include the following actions:

Placement of the proposed detached carport within the subject property to fit the correct building envelope denoted on the site plan as prescribed by the Zoning Code. Given steep topography of the subject property, finding a more suitable area for the placement of the detached carport is not available.

Because the encroachment is within the front yard setback, to consolidate the subject property with the existing roadway and to re-subdivide the property to modify property

lines and adjust minimum side yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue

Intent and Purpose

- (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 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.

The encroachment of 10 feet into the front (east) yard setback and 4 feet into the associated front (east) yard open space area still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

Based on the foregoing findings and unusual circumstances, the applicant's request 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 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.

Objections were not received from the adjacent owner, the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

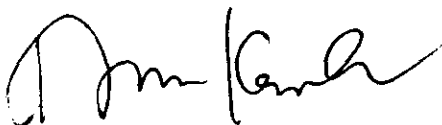
This variance request is **approved** subject to the following conditions. Based on the variance application's survey map, the proposed detached carport to be constructed upon the subject property ("LOT 29A") will not meet the minimum front yard setback and front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

Niles R. Huey
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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 Hawai'i 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 related to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code's minimum front yard setback and front open space requirement. The approval of this variance allows for the proposed detached carport to be constructed on the subject property, pursuant to the variance application's site plan map.
4. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance 14-000195 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Planning Department-Kona Office
Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via email)

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 APR -7 AM 10:38



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: April 4, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye *N*
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-14-000195
Applicant: NILES R. HUEY
Owner: NILES R. AND PAMELA HUEY
Request: Variance from Chapter 25, Zoning, Article 5, Division 5,
Section 25-5-56, minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (East) Yard
Setback and Front (East) Yard Open space
Tax Map Key: 8-7-015-011 & 012 Lot 29A

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

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