

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i

PLANNING DEPARTMENT

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

March 19, 2015

Carmen H. Bowman
302C Ululani Street
Hilo, Hawai'i 96720

Dear Ms. Bowman:

SUBJECT: Application: Variance VAR-14-000247
Applicant: CARMEN H. BOWMAN
Owners: CARMEN H. BOWMAN
Request: Variance from Chapter 25, Zoning, Article 5, Division 3,
Section 25-5-36, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (Northeast) Yard
Setback and Front (Northwest) Yard Open Space)
TMK: 2-3-018:045; Lot 5-B

The Planning Director certifies the **approval** of Variance 14-00247, subject to conditions. The variance will allow portion of the proposed two-car carport to be constructed, with a minimum 2-foot 3-inches front (northwest) yard setback and associated front yard open space in lieu of the minimum required 20-foot front yard setback and 14-foot front yard open space requirement. The variance is from the subject property's minimum 20-foot front yard setback and 14-foot front yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 2, Section 25-5-36, Minimum yards and Section 25-4-44, Permitted Projections into Yards and Open Space.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 3,240 square feet and is situated in Pu'uco, South Hilo, Hawai'i. The street address is 302C Ululani Street.
2. **County Zoning.** Multiple Family Residential – 1,000 sq. ft. (RM-1).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** The subject property is 3,240 square feet in size. The setbacks are 20-feet for front; side yards are eight feet for a one-story building, plus an additional two feet for each additional story. The subject property is a corner lot where Section 25-4-42 states that for "Corner building sites (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable."
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 10, 2014. The variance application's site plan is drawn to scale and prepared by Carmen H. Bowman, denotes the portion of the open carport built into the front (northeast) yard open space.

The owner/applicant submitted the variance application to allow the encroachment of a new proposed two-car carport into the 20-foot front (northwest) yard setback and the associated 14-foot front (northwest) yard open space, as required by the Zoning Code.

The survey map shows that portion of the proposed two-car carport will encroach 17 feet 9 inches into the 20-foot front (northwest) yard setback and 11 feet 9 inches into the associated front yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2008-0326H) was issued on February 20, 2008, for the construction of a 2-bedroom and 2 bath single-family dwelling.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 21, 2014. (Refer to attached DOH memorandum).
 - b. The Department of Public Works Building Division e-mail dated November 26, 2014. (Refer to attached DPW e-mail)
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 October 23, 2014 and January 21, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 2, 2014.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated November 7, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to March 20, 2015.
10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to allow the encroachment of a new proposed two-car carport into the 20-foot front (northeast) yard setback and associated 14-foot front yard open space as required by the Zoning Code.

The plot plan prepared by Carmen Bowman shows that portion of the two-car carport will encroach 17 feet 9 inches into the front (Northwest) yard setback and 11 feet 9 inches into the associated 14-foot front (northwest) yard open space.

Although lot sizes for the RM-1 zoning require a minimum 7,500 square feet, this property is only 3,240 square feet, which makes it difficult for the owner to comply with current zoning requirements and the owner wishes to construct a two-car carport to protect their vehicles from all-weather conditions.

It should be noted that Section 25-5-34 of the county code identifies that the minimum building site in the Multiple Residential (RM) district should be 7,500 square feet; however, this property was created prior to the adoption of the zoning code and is smaller than the minimum 7,500 square feet lot size.

Therefore, based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development 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 correct and/or address the building encroachments constructed into the affected front yard of the subject property include the following actions:

Redesign or relocate the proposed two-car carport to be constructed upon the subject property to fit within the correct building envelope as prescribed by the Zoning Code. Due to the size (3,240

square feet) of the subject property, redesigning the two-car carport to meet setback requirement will require the owner to construct a smaller carport and would diminish the overall functionality of the proposed improvement.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; 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 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 encroachment of 17 feet 9 inches into the 20-foot front (northwest) yard setback and 11 feet 9 inches into the associated front yard open space still allows for adequate air circulation, as the affected area is within the front setback adjacent to roadway frontage.

Objections were not received from 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 foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purposes of the Zoning Code, Subdivision Code and the County General Plan. 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

Based on the variance application's site plan, the open carport built upon the subject property (Lot 5-B) will not meet the minimum front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance 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. No permit shall be granted to allow an ohana 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. Should the open carport on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
5. The owner shall secure a building permit for carport within six months from the approval date of the variance.
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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-14-000247.

Sincerely,



DUANE KANUHA
Planning Director

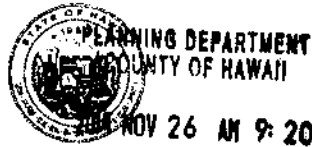
LHN:nci

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

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NEIL ABERCROMBIE
GOVERNOR



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: November 21, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000247
Applicant: CARMEN H. BOWMAN
Owner: CARMEN H. BOWMAN
Request: Variance from Chapter 25, Zoning, Article 5, division 3,
Section 25-5-36 Minimum Yards and Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the
Northwest Front Yard Setback).
Tax Map Key: 2-3-018:045

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

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PLANNING DEPARTMENT
COUNTY OF HAWAII
2014 NOV 28 PM 3:43

Matsumoto, Joy

Wed 11/26/2014 9:05 AM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

Variance - VAR 14-000247

Owner: Carmen H. Bowman

TMK: 2-3-018:045

Building Division has no objection to this variance. A building permit must be applied for as this is an illegal addition.

Joy Matsumoto

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: jmatsumoto@co.hawaii.hi.us

095614

1020 ULULANI ST. HILO

STONE WALL - (RETAINING) BOUNDRIES - 5-6 FT. HIGH
DRIVEWAY IS 25' WIDE WITH A 6 FT. HILL
DRIVEWAY AND GARAGE AREA IS CONCRETED

PONCHAWAI LANE - TOP OF RETAINING WALL
58'

