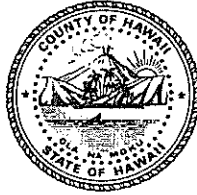


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

July 29, 2002

Mr. Edwin Y. Kuniyoshi
BELT COLLINS HAWAII LTD.
2153 North King Street, Suite No. 200
Honolulu, HI 96819

Dear Mr. Kuniyoshi:

VARIANCE PERMIT NO. 1298 WH (VAR 02-029)

Agent: BELT COLLINS HAWAII
Applicant: MAUNA KEA DEVELOPMENT CORP.
Owner: MAUNA KEA DEVELOPMENT CORP.
**Request: Variance from Minimum Open
Space Requirements,
Pursuant to Chapter 25, Zoning**
Tax Map Key: 6-2-016:003, Lot 3

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1298 allows portions of the dwelling being constructed on Lot 3 to remain, "AS BUILT", with a minimum 16.25 feet front yard and corresponding 10.25 feet front yard open space according to variance application's site plan dated April 2002. The variance request is from the Zoning Code, Chapter 25, Article 5, Section 25-5-36, Minimum yards, (1), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 3 consisting of 17,497 square feet, is located with "The Uplands at Mauna Kea, Parcel B Subdivision", File Plan 2249, and situated at Ouli, Waimea, South Kohala, Hawaii.

The property is zoned Multiple Residential (RM-15) by the County and designated Urban "U" by the Land Use Commission (LUC).

022372

JUL 30 2002

Mr. Edwin Y. Kuniyoshi
BELT COLLINS HAWAII LTD.
Page 2
July 29, 2002

2. **Variance Application-Site Plan(s)**. The applicant submitted the variance application, attachments, and filing fee on May 20, 2002. One of the applicant's site plan drawings-Figure 4, which is drawn to scale and dated April 2002, identifies the extent of the dwelling encroachments. This site plan drawing is based on a 2001 survey of Lot 3 by R.M. Towill Corporation to design Lot 3's driveway access.

3. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum dated June 4, 2002, states:

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

- b. The Department of Public Works (DPW)-Building Division comments dated April 18 2002 (sic) states in part:

"We oppose the approval of the application for the reasons noted below:

All new building construction shall conform to current code requirements.

Others: If construction started in 2001 and is presently under completion, there should be a building permit. There is no building permit T.M.K. 6-2-016:003 in our records."

- c. The County of Hawaii Fire Department memorandum dated June 19, 2002, states:

"We have no comments to offer at this time regarding the above-referenced variance application."

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on May 21, 2002 and June 10, 2002 by the applicant

Mr. Edwin Y. Kuniyoshi
BELT COLLINS HAWAII LTD.
Page 3
July 29, 2002

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during construction of the dwelling on Lot 3. The applicant, on behalf of the owners, is trying to resolve building encroachment issues created by the staking or construction error. One of the variance application's site plan map (April 2002-Figure 4) denotes the a portion or sliver of the dwelling's "building area" and attendant roof eaves, "AS BUILT", intrude into the minimum 20 feet front yard required by the Zoning Code. The contractor and owners discovered the building encroachment issues after a 2001 survey of the property. No evidence has been found to show indifference or premeditation by the contractor or owners to deliberately create or intentionally allow the building encroachment problems to occur. It appears the existing dwelling improvements are being constructed under valid building permit(s) and other construction permits issued by the County on or about February 28, 2000. The extent of the "building area" and position of the dwelling within the front yard of Lot 3 was discovered after major construction activity to construct the dwelling on the property was completed by the builders and engineering survey of Lot 3 was completed in 2001 for the development.

ALTERNATIVES

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

1. Remove the dwelling and roof eave improvements that encroach into the front yard and attendant front yard open spaces required by the Zoning Code.
2. Redesign and relocate the entire dwelling to fit within the building envelope prescribed the Zoning Code and other design and remedial building alternatives.
3. Consolidation and resubdivision to modify the property lines or adjustment of the common front boundary line and the right-of-way (roadway lot).

Mr. Edwin Y. Kuniyoshi
BELT COLLINS HAWAII LTD.
Page 4
July 29, 2002

To require or impose partial removal of the encroachments and modifying the attendant roof eave(s) to meet the Zoning Code minimum yard and open space requirements would seem unreasonably harsh and uneconomical at this time.

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 existing "building area" or encroachments into the lot's minimum front yard and attendant front yard open space requirements are not physically and visually obtrusive from adjoining lots or the right-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, resort and public uses, and the existing and surrounding land patterns. Therefore, it is felt that the dwelling or building encroachments within the front yard and attendant front yard open space will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated May 29, 2002 and additional time to consider the DPW comments and building permit issues was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than July 31, 2002.

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.

Mr. Edwin Y. Kuniyoshi
BELT COLLINS HAWAII LTD.
Page 5
July 29, 2002

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 or "building area" identified on the variance applications site plan map will not meet Chapter 25, the Zoning Code's minimum front yard and attendant front yard open space requirements. The approval of this variance allows the new dwelling improvements identified on the variance application's site plan dated April 2002, Figure 4, to remain, "AS BUILT", on the subject TMK property.
4. The building permit (BP No. 005263) and construction permits issued to the subject TMK property (Lot 3-17,497 square feet) shall be "finaled or closed by the DPW prior to the sale of the property or any further changes in the property title.
5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

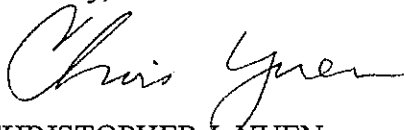
Mr. Edwin Y. Kuniyoshi
BELT COLLINS HAWAII LTD.

Page 6

July 29, 2002

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/RRT:cps

P:\WP60\WRY\FORMLETT\VARAPPZCTMK62016003.KUNIYOSHIBC

xc: Real Property Tax - Kona
Planning Dept. - Kona