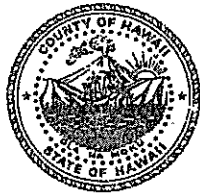


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

January 30, 2003

Mr. Paul Heerlein  
73-1208 Kahi Loop  
Kailua-Kona, HI 96740

Dear Mr. Heerlein:

**SUBJECT: VARIANCE PERMIT NO. 1346 (VAR 02-053)**  
**Applicant: PAUL HEERLEIN**  
**Owner: PAUL HEERLEIN**  
**Request: Variance from Minimum Yards,**  
**Chapter 25, the Zoning Code**  
**Tax Map Key: 7-3-011:008, Lot A-120**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions stated herein. Variance Permit No. 1346 allows portions of the 2-Story dwelling improvements to remain on the subject property, "AS BUILT", with a minimum 14.2 feet front yard in lieu of 15.0 feet front yard according to applicant's variance site plan map dated March 19, 2002. The variance request is from the lot's minimum fifteen (15) feet front yard pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

### BACKGROUND AND FINDINGS

1. **Location and Zoning.** The subject property, A-120 containing of 8589 square feet, is located within Kona Highlands, Section "A", File Plan 688, being a portion of Grant 3027, and situated at Kalaoa 1<sup>st</sup>. and 2<sup>nd</sup>., North Kona, Hawaii.

The subject TMK property is zoned Agricultural (A-5a) and designated Urban "U" by the State Land Use Commission. The non-conforming size lot is a corner lot.

2. **Variance Application-Site Plan.** The applicant submitted the variance

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application form, supplemental information, tax clearance, and \$250.00 filing fee check on or about August 7, 2002. The variance application's site plan map is drawn to scale and prepared by Don McIntosh Consulting. The site plan map was signed on March 22, 2002 by Donald C. McIntosh, L.P.L.S. The site plan map shows and denotes portions of the "2 Story House" or dwelling encroach into the property's front yard. The site plan identifies the building envelope prescribed by the Hawaii County Zoning Code.

**Note:** The dwelling's individual wastewater system (IWS) or cesspool is not located or identified on the site plan map. The variance request does not address the rock wall straddling common boundary lines or within the right-of-way. Any wastewater or wall encroachment issues must be addressed and resolved by applicant with the affected agency(s) or between legal property owner(s).

3. **Building Permit(s)**. According to county records, the following 3-DPW building permits were issued to a previous owner: BP No(s). K07085, 945375, and 895436, for the original dwelling, storage, and carport building improvements, respectively. Only permits, K07085 and 945375, were closed by the DPW-Building Division. Furthermore, it appears that two (2) building permits (#026645 and #026406) and 2-related construction permits (E026600 and M026167) were issued by the DPW to the current owner in 2002.
4. **Agency Comments and Requirements (VAR 02-053)**.

- a. The Department of Public Works (DPW) memorandum dated August 21, 2002, states in part:

"We have reviewed the subject application and offer the following comment.

Please refer to the attached Building Division comments dated August 19, 2002."

The attached DPW memorandums dated August 19, 2002, states in part the following:

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

The Building #895436 (carport) and Electrical #EK05747 (dwelling) permit for the carport/dwelling has no status of inspections."

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- b. The State Department of Health (DOH) memorandum dated August 27, 2002 states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

5. **Notice to Surrounding Owners.** The applicant a list of surrounding property owners. It appears that the applicant mailed the first and second notice(s) on or about July 29, 2002 and September 18, 2002, respectively. A notarized correction letter to verify the TMK property number was received on December 9, 2002 by the Kona Planning Department.
6. **Comments from Surrounding Property Owners or Public.** No further agency comment were received. No written objection letters from surrounding property owners or general public were received.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment problems were discovered after the dwelling was constructed on about 1984. The applicant or owner is trying to resolve the building encroachment issues identified by the recent survey map. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT". The site plan identifies the dwelling or building encroachments within the property's minimum front yard along Kahi Loop pursuant to the Hawaii County Zoning Code. The applicant or current owner became aware of building encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the previous owner(s) or builder(s) to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling, storage, and carport improvements were constructed under valid building permit(s) and construction permits issued by the County to a previous owner. It appears that the building inspections of the premises, during building construction or the original dwelling and throughout the life of 3-building permits and other construction permits issued to construct the original building improvements did not disclose any building encroachment issues or building setback irregularities.

### **ALTERNATIVES**

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or

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current owner(s). Alternatives available to the applicant or current owner(s) to address the encroachment issues include the following actions:

1. Remove a small corner of the dwelling and attendant roof eaves within the front yard required by the Zoning Code.
2. Redesign and relocate the dwelling to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.
3. Consolidate the subject property (Lot A-120) with the right-of-way (Kahi Loop) and resubdivide the property back into like areas and shift or adjust affected yards accordingly to provide minimum building lines, minimum yards, and other associated open space requirements.

#### **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 the small dwelling encroachment into the minimum front yard is not physically and visually obtrusive from adjacent property(s) or the existing right-of-way. It appears that these encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, it is felt that the existing dwelling encroachments within the front yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 12, 2002 and additional time to consider agency comments and clarify the subject property's TMK or parcel number identified on the list of surrounding property owner 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 January 31, 2003.

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.

**VARIANCE DECISION AND CONDITIONS**

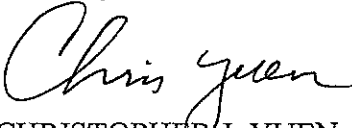
The variance request is approved subject to the following conditions:

1. The applicant/owner(s), 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/owner, 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 existing 2-story dwelling encroach into the 15-foot front yard required by Chapter 25, the Zoning Code and are identified on a site plan map prepared and signed by a surveyor on March 22, 2002 submitted with the variance application. The approval of this variance allows these building encroachments, "AS BUILT", located within a front yard to remain on A-120 or subject TMK property.
4. The applicant or current owner(s) shall confer with the DPW-Building Division in Kona and address the status of outstanding building permit (#895436) and electrical permit (#EK05747) permit. The requirements of the outstanding permits and any further building permits and related construction permits issued to the current owner shall be satisfied and "closed" by the DPW prior to any change in title or further sale of the property.
5. 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.
6. Future building additions or improvements and permitted uses on A-120 or the subject TMK property 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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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cc: Real Property Tax Office - Hilo  
Planning Dept. - Kona