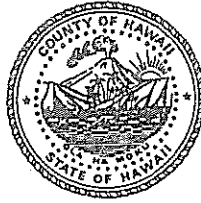


Harry Kim  
Mayor



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

December 22, 2005

Ms. Emely Wilson  
P. O. Box 54  
Salyer, CA 95563

Dear Ms. Wilson:

**VARIANCE PERMIT NO. VAR 05-066**  
**Applicant: EMELY WILSON**  
**Owners: BONNY LOUISE SOMERS, ET AL.**  
**Request: Variance from Chapter 25,**  
**Zoning, Minimum Yards**  
**Tax Map Key: 1-5-087:018, Lot 3**

After reviewing your application and information submitted, the Planning Director certifies the approval of Variance Permit No. 05-066 to allow portions of a garage, "AS-BUILT", to remain on Lot 3 with a minimum 13.7 feet front yard in lieu of the minimum 15.0 feet front yard requirement according to the variance site plan map dated May 4, 2005 (Revised: June 6, 2005). The variance is from the TMK property's minimum front yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

#### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 3 containing 9750 square, is a portion Hawaiian Beaches Subdivision, and situated at Waiakahuila, Puna, Hawaii. The TMK property's address is 15-130 Alulepe Street.

The TMK property was zoned Agricultural (A-1a) by the County and designated Urban "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not abut the shoreline.

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about September 20, 2005. The variance application's site plan map was prepared by CLS-HAWAII is drawn to scale and dated May 4, 2005 (Revised: June 6, 2005). This site plan map denotes the "AS-BUILT" location of a "Single Story Residential Dwelling/Deck/Garage", on Lot 3. A portion of the "Garage" is within the lot's minimum 15 feet front yard or 13.70 feet from the boundary line along Alulepe Street.

The applicant's letter included with the variance application is dated May 31, 2005 and states in part:

"We pulled a building permit in 2000 and we built on top of the existing foundation, unaware of the encroachment. We thought we had done everything legally and correctly. Now we are selling our home and a new survey shows that the garage is encroaching on the county road setback. We have been told that the 1<sup>st</sup> survey did not list the encroachment because it had not been built on so the surveyor may have thought it was a driveway. The slab was elevated several inches above ground level and had rebar sticking up several feet out of each of the corners, it was obviously going to be a garage."

**Note:** The dwelling's wastewater system was not denoted or identified on the variance site plan map. The map does not denote or identify any landscaping improvements or perimeter fencing/walls on the subject TMK property.

3. **Agency Comments and Requirements-(VAR 05-055):**

- a. The State Department of Health (DOH) memorandum dated October 17, 2005 states:

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

- b. The Department of Public Works (DPW) response is dated October 20, 2005, and states:

"NO COMMENTS"

**Note:** The owners name-“KEVIN MCGILL, ET AL.” listed on the transmittal memorandum dated October 6, 2005 is a typographical error. The owner’s name listed on the transmittal memorandum and owner’s name on the respective agency memorandums cited above should be corrected to read “BONNY LOUISE SOMMERS, ET AL.”

4. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices sent surrounding property owners and certificate of mailing(s). According to these submittals it appears that the notices were mailed by the applicant to a list of surrounding property owner(s) on or about September 12, 2005 and October 17, 2005, respectively.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owners, is trying to resolve the building encroachment issues built in 2000. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling/deck/garage, “AS BUILT” on “Lot 3”. The site plan identifies portions of the garage within the minimum 15-foot front yard pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of building encroachment issues after the survey map was completed or during escrow to sell the property. No evidence was found showing indifference or premeditation by the applicant or previous builders to deliberately create or intentionally allow the dwelling encroachments to be constructed within the affected front yard. The dwelling and garage improvements were built under a valid building permit and/or construction permits issued by the County; and, inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

### **ALTERNATIVES**

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

1. Remove portions of the “Garage” encroachments or redesigning or relocating the deck/garage to fit within Lot 3’s “building site” or building envelope prescribed by the Zoning Code and identified on the variance site plan map.

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2. Consolidation of subject property-Lot 3 with adjoining right-of-way and resubdivision of the resulting consolidated property to modify a property line and adjust minimum front yard.

### **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 "Garage" and "Deck" encroachment into the front yard are not physically and visually obtrusive from adjoining property(s) or right-of-way. The garage encroachment within the affected front yard was discovered during escrow to sell the property. According to the applicant, the "Garage/Deck" encroachment within the minimum 15 feet front yard was a building mistake. These encroachment issues were revealed after a survey of the property and revised map was completed during escrow to sell the property. It is felt that the 5 + year old building encroachments denoted on the variance site plan map have not affected or altered the character of the subdivision and surrounding land patterns.

Therefore, it is felt that the building encroachments within the minimum front yard of the subject TMK property (Lot 3) will not detract from the character of the immediate neighborhood or subdivision.

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.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

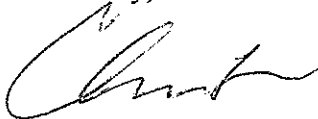
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 a "Garage/Deck" on the subject TMK property or "Lot 3" or denoted on the variance site plan map (Revised: June 6, 2005) will not meet Chapter 25, the Zoning Code's minimum front yard requirements. The approval of this variance allows the building encroachments within the front yard identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (Lot 3).
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 3), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
6. Future 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 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:cd  
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cc: Real Property Tax Office-Hilo