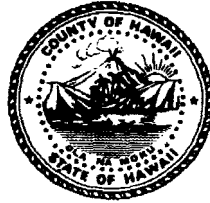


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
PLANNING DEPARTMENT

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

June 12, 2014

Mr. Scott Bedingfield  
P. O. Box 1220  
Kapa'au, HI 96755

Dear Mr. Bedingfield:

**SUBJECT: VARIANCE APPLICATION – VAR-11-000026**

**Applicant: SCOTT BEDINGFIELD**

**Owners: JONATHAN PAUL & SHERI KEALA BARTSCH**

**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Side Yard Setback)**

**TMK: 5-4-011:093, Lot 35**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-11-000026, subject to variance conditions. The variance will allow a portion of the existing garage to remain "as built" with a 8.71-foot to a minimum 9.23-foot side (southwest) yard setback. These exceptions are in lieu of the required 10-foot side yard setback, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 15,000 square feet of land, and is situated at Kynnersly Track 2, North Kohala, Hawai'i. The subject property's street address is 54-2433 Kynnersley Road.
2. **Zoning.** Single-Family Residential – 15,000 square feet (RS-15).
3. **State Land Use.** Urban (U).
4. **Required Setback.** 20 feet for front and rear; 10 feet for sides.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on September 25, 2009, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Donald C. McIntosh, L.P.L.S. denotes the portions as-built garage built into the southwest side yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the carport into the 10-foot side yard setback as required by the Zoning Code.

The survey map prepared by Donald C. McIntosh, L.P.L.S. shows that portions of the "as-built" garage encroaches 0.77 feet and 1.29 feet into the 10-foot side (southwest) yard setback.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a 3 bedroom, 1 bath single-family dwelling was built in 1947.
7. **Agency Comments and Requirements.**
- a. The State Department of Health (DOH) memorandum, dated April 8, 2014. (See attached memorandum)
  - b. The Department of Public Works – Building Division memorandum dated May 7, 2014. (See attached memorandum)
8. **Notice to Surrounding Property Owners.** 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 April 2, 2014 and April 15, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 22, 2011.
9. **Time Extension.** The applicant's variance application was received on September 9, 2009 and additional time was needed for the applicant to meet all variance application requirements. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until June 23, 2014. (See attached letter)
10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

#### ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 “as-built” garage into the 10-foot side yard setback as required by the Zoning Code.

The survey map prepared by Donald C. McIntosh, L.P.L.S. shows that portions of the “as-built” garage encroach 0.77 feet to 1.29 feet into the 10-foot side (southwest) yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the as-built garage improvements were constructed nearly 23 years ago under valid building and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. The encroachment is miniscule although exceeding the code requirement.

The above special and unusual circumstance determines the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the property.

***(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 east side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the as-built garage constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction of the single-family dwelling to meet setback requirements would leave unattractive reconstruction scars.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else 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.

***(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's***

*welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The variance application meets criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks on 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 granting of the setback variance still allows for adequate air circulation as the affected area is within the side setback adjacent to the adjoining property.

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 purpose 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 23 years since the as-built garage was constructed. Further, 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 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**

Based on the variance application's survey map, the as-built garage built upon the subject property ("LOT 35") will not meet the minimum side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code). 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 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 relating to or connected with the granting of this variance.
3. No future permits shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.

Mr. Scott Bedingfield  
June 12, 2014  
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4. Should the "as-built" 3-car garage (footprint) 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. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-11-000026 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:klt

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xc: Planning Department (Kona)  
Real Property Tax Division (Kona)  
Gilbert Bailado, Planning GIS

Mr. Scott Bedingfield  
June 12, 2014  
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PLANNING DEPARTMENT  
2014 MAR 24 AM 8:36

**Scott Bedingfield**  
P.O. Box 1220, Kapaau, HI 96755  
Phone: 808-896-9001  
Email: [sbedingfield@hawaii.rr.com](mailto:sbedingfield@hawaii.rr.com)

March 23, 2014

Mr. Larry Nakayama  
Planning Department, County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, HI 96720

Re: TMK 5-4-011:093  
Subject: Variance Application (VAR 11-026)

Aloha Mr. Nakayama,

Confirming our telephone conversation, I am renewing my efforts as Authorized Representative to complete the Variance Application process for the above-referenced parcel. This letter is to notify the Planning Dept. and to acknowledge a 90-day extension from this date for the Planning Dept. to administratively process the variance application.

Attached please find the list of adjacent property owners that will be notified by mail of the variance application as required by Section 25-2-4.

Thank you for your assistance.

Sincerely,



Scott Bedingfield, Authorized Agent

Cc: Jonathan Bartsch, Property Owner (via email)

P.O. Box 1220, Kapaau, HI 96755  
Ph: (808) 896-9001  
Email: [sbedingfield@hawaii.rr.com](mailto:sbedingfield@hawaii.rr.com)

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Mr. Scott Bedingfield  
June 12, 2014  
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NEIL ABERCROMBIE  
GOVERNOR



LINDA ROSEN, M.D., M.P.H.  
DIRECTOR OF HEALTH  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 APR -9 PM 2: 01

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

MEMORANDUM

DATE: April 8, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance - VAR 11-000026  
Applicant: SCOTT BEDINGFIELD  
Owner: JONATHAN PAUL & SHERI KEALA BARTSCH  
Request: Variance from Chapter 25, Zoning, Article 5 Division 1  
Section 25-5-7 Minimum Yards: (Encroachment into the  
South Side Yard Setback)  
TMK: 5-4-011:093; Lot 35

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

091039

WORD: VAR-11-000026.ni

Mr. Scott Bedingfield  
June 12, 2014  
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**BUILDING DIVISION – DPW**

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 MAY 6 PM 2:37

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawaii 96720  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

May 7, 2014

To: Planning Department

SUBJECT: Variance- VAR 11-000026

TMK: (3)5-4-011-093

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No \_\_\_\_\_ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
  - Building     Electrical     Plumbing     Sign
- Others:

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720

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