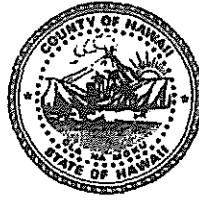


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

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

May 23, 2006

Mr. Gary E. Ashikawa  
3666 Waokanaka Street  
Honolulu, HI 96817

Dear Mr. Ashikawa:

**VARIANCE PERMIT-VAR 06-009**

**Applicant: GARY E. ASHIKAWA**

**Owner: GARY E. ASHIKAWA**

**Request: Variance from Chapter 25, Zoning  
Minimum Yards**

**Tax Map Key: 8-1-020:042, Lot A-4-G**

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit-VAR 06-009 permits portions of 1-story dwelling/garage to remain on Lot 4-G-12, "AS-BUILT", with a minimum 19.4 feet to minimum 19.99 feet front yard, minimum 9.3 feet to minimum 9.7 feet side yard, and minimum 4.9 feet to minimum 4.99 feet side yard open space between "eave line" and side boundary line identified on the applicant's variance site plan map dated May 9, 1996. The variance is from the TMK property's minimum 20.00 feet front yard, minimum 10.00 side yard(s) and attendant minimum 5.00 feet side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A)(B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot A-4-G containing 11,391 square feet, is part of Ld. Ct. Application 1069, as shown on Map 30, and situated at Keekee 1<sup>st</sup>, North Kona, Hawaii.

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The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about January 5, 2006 to the Kona Planning Department. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates. The variance site plan map, dated May 9, 1996 denotes portions of the "SINGLE STORY DWELLING/GARAGE" was built within a minimum 20 feet front (northwesterly) yard and minimum 10 feet side yard and attendant minimum 5.0 feet side (southerly) yard open space of "LOT A-4-G" or subject TMK property.

The applicant's background dated January 3, 2006 ("REASONS") states in part:

- "1. The Owner and Contractor were not aware of the Contractor's error in constructing the dwelling partially in the front yard and side yard setback areas of the property, as described above, until 1996, fifteen years after the dwelling was constructed.
2. Consolidation/Resubdivision of the property with the adjacent TMK:(3)8-1-2-:46 (sic) on the south side of the property is probably not possible, as adjacent TMK:(3)8-1-2-:46 (sic) is 10,002 square feet (only 2 square feet more than the 10,000 square feet minimum for an RS-10 zoning) and the existing dwelling appears very close to it's side yard setback, and therefore probably not an alternative."

**Note:** The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of CRM walls and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (K04761), 1-Electrical Permit (EK04328), and 1-Mechanical (MK03830) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling/garage on subject TMK property was built pursuant to these building and associated construction permits issued during 1981.

4 **Agency Comments and Requirements-VAR 06-009:**

- a. The Department of Public Works (DPW) memorandum dated April 18, 2006 states in part:

"The applicant shall remove any encroachments or obstructions within the County right-of-way."

The attached DPW-Building memorandum dated April 17, 2006 states in part:

"We have no comments or objections to the application."

- b. The State Department of Health (DOH) memorandum dated April 19, 2006 states:

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

- 5 **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on January 4, 2006 and April 5, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 7, 2006.

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

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling/garage encroachments within the minimum front and minimum side yard and attendant minimum side yard open space. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling/garage and other site improvements, "AS BUILT", on "LOT A-4-G". The current owners became aware of building encroachment issues circa 1996. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected minimum yards.

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It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 1-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements in 1981-1982, the dwelling encroachment within the property's minimum yards went unnoticed.

### **ALTERNATIVES**

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

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot A-4-G with adjoining lot (TMK: 8-1-20:46, Lot 1) and resubdivision to modify property lines or adjust minimum yards.

### **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 dwelling/garage encroachments constructed approximately 24 years ago into the property's minimum front yard, minimum side yard, and attendant minimum side yard open space are not physically and/or visually obtrusive from the adjacent property (Lot 1) or rights-of-way (Alalani Street and Kekaa Place). It appears that these 24 +/- year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected front yard and side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 29, 2006 and additional time to send proof of mailing receipts and consider agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance.

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.
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/garage or "SINGLE STORY DWELLING/GARAGE" located on "LOT A-4-G" will not meet the property's minimum front yard, minimum side yard, and attendant minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 9, 1996. The approval of this variance permits the "SINGLE STORY DWELLING/GARAGE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT A-4-G-" according to the variance site plan map dated May 9, 1996.
4. 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.
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 building occupancy.

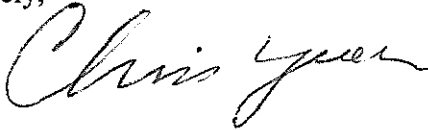
Mr. Gary E. Ashikawa

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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,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN

Planning Director

WRY:cd

P:\WP60\WRY\FORMLETT\VAR06-009ZCSETBACK\TMK81020042.ASHIKAWA

xc: Real Property Tax Office-(Kona)