

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

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Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

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July 14, 2011

Mr. Michael M. Kamegawa  
P.O. Box 4472  
Kailua-Kona, HI 96745-4472

**SUBJECT: Application: VARIANCE (VAR) 10-025**  
**Applicant: MICHAEL M. KAMEGAWA**  
**Owners: MICHAEL M. KAMEGAWA**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, (a), Section 25-5-77 Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.**  
**TMK: 7-3-031:078, Lot 17**

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Dear Mr. Kamegawa,

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. VAR 10-025, subject to variance conditions. The variance will allow the as-built storage shed constructed on Lot 17 with a minimum 10.3 feet front yard setback and front yard open space, in lieu of minimum 20.0 feet front yard setback and attendant minimum 14 feet front yard open space requirement. The variance is from the subject property's minimum front yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (1)(A). Minimum yards, (a), Section 25-5-77 Other regulations, 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, consisting of approximately 10,718 square feet of land, being Lot 17, of Kona Palisades Subdivision, Unit I, is situated at Kalaoa 5<sup>th</sup>, North Kona, Hawai'i. The subject property's street address is 73-4315 One One Street.

2. **Zoning.** The subject property is zoned Single-Family Residential – 10,000 square feet (RS-10) by the County and designated Urban or “U” by the State Land Use Commission (LUC).
3. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on June 8, 2010. The variance application’s site plan is drawn to scale and denotes the as-built storage shed built into the minimum 20 feet front yard setback.
4. **County Building Records.**
  - a. Hawai‘i County Real Property Tax Office records indicate that a building permit (915773) was issued on June 25, 1991 to construct a Single Family Dwelling consisting of 3 bedrooms and 3 baths.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated September 13, 2010 (refer to memorandums in variance file).
  - b. Department of Public Works – Building Division memorandum dated October 18, 2010 (refer to memorandum in variance file).
6. **Public Notice.** A copy of the first and second notices sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first notice was mailed on June 22, 2010 and the second notice was mailed on October 8, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 17, 2010.
7. **Comments from Surrounding Property Owners or Public.**
  - a. Objection letter dated on October 8, 2010 sent by Robert Crawford.
  - b. Objection letter dated on October 18, 2010 sent by Tony and Linda Takai.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant submitted the variance application to address the as-built storage shed encroachment within the property’s minimum 20 feet front yard setback. The applicant has stated that the placement of the as-built storage shed was due to consideration of the neighbors’ view plain. An approximate 20-foot high retaining wall (see photograph B in file for visual reference) is present within the front yard setback, which is permitted and viewed not as a structure but as establishing the property grade. Construction of the shed within the front yard was not contemplated as significant due to the 20-foot height differential created by the retaining wall.

### **ALTERNATIVES**

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front yard and open space of the subject property include the following actions:

One option in removing the building encroachment is to redesign and/or relocate the as-built storage shed upon the subject property to fit within the correct building envelope. However, as mentioned above, relocating the storage shed closer to the dwelling would negatively impact view plains in this vicinity.

The second alternative would be to consolidate the subject property with an adjoining property and re-subdivide to modify property lines and adjust minimum yard setbacks. Given the location of the encroachments (front yard), consolidation/re-subdivision with One One Street right-of-way would not be practical.

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision or development are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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 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.

The variance application was acknowledged by letter dated September 3 2010, however additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for a decision on the variance application.

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

This variance application is approved subject to the following variance 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,

Mr. Michael M. Kamegawa

Page 4

July 14, 2011

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 permit 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.
4. The as-built storage shed constructed upon the subject property ("Lot 17") will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated. The approval of this variance permits the storage shed to remain upon the subject property.
5. Should the as-built storage shed (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new storage shed shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction
6. 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance - VAR 10-025 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Kona Office  
Real Property Tax Office (Kona)