

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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**County of Hawai'i**  
PLANNING DEPARTMENT

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

January 23, 2015

Lillian Y. Matayoshi, RS  
GS Hawaii Realty Corp.  
688 Kinoole Street  
Hilo, HI 96720

Dear Ms. Matayoshi:

**SUBJECT: Application: Variance VAR-14-000257**  
**Applicant: LILLIAN Y. MATAYOSHI/CG HAWAII REALTY CORP.**  
**Owners: DEE and ALAN BABA**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into Side (West) Yard Setback)**  
**TMK: 2-4-040:034; Lot 34**

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The Planning Director certifies the **approval** of Variance 14-00257, subject to conditions. The variance will allow portion of the ohana dwelling to remain on Lot 34, with a minimum 9.4-foot side (west) yard setback. This allowance is in lieu of the required minimum 10-foot side yard setback. This variance is from the subject property's minimum side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7 (a), Minimum yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 15,002 square feet and is situated within the Hawaii Fairway Subdivision, Waiākea Homesteads, South Hilo, Hawai'i. The subject property's street address is 629 Haihai Street.
2. **County Zoning.** Single-Family Residence – 15,000 square feet (RS-15).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet for the front; 10-feet for sides; Section 25-4-42, Corner building sites: (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 24, 2014. The variance application's survey map was prepared by Roy G. Holloway (Island Boundary) denotes that a portion of the ohana dwelling encroaches 0.60 feet (7.2 inches) into the 10-foot side (west) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the ohana dwelling into the 10-foot side (west) yard setback, as required by the Zoning Code.

The survey map shows that portion of the single-family ohana dwelling encroaches 0.60 feet (7.2 inches) into the 10-foot side (west) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#881404) was issued on July 19, 1988 to the subject property for a single-family dwelling consisting of a 4 bedroom, 2.5 bath, living room, kitchen, and dining area. an additional building permit was issued on August 29, 2006 (B2006-2206H) for an ohana dwelling consisting of 2 bedrooms and 1 bath.
7. **Ohana Dwelling Permit.** Ohana Dwelling Unit Permit (OHD -05-0043) was issued on July 5, 2005 to allow for the construction of a 2-bedroom, 1 bath ohana dwelling.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 19, 2014. (Refer to attached DOH memorandum).
  - b. No comments received from the Department of Public Works Building Division.
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on November 26, 2014 and December 9, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 16, 2014.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

## GROUNDS FOR APPROVING VARIANCE

### **Special and Unusual Circumstances**

- (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 criterion (a) for the following reasons:**

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

The site prepared by Roy G. Hollowell, L.P.L.S. (Island Boundary) shows that the single-family ohana dwelling encroaches 0.60 feet (7.2 inches) into the 10-foot side (west) 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 original dwelling improvements constructed in 2006 nearly 8 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits 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 above special and unusual circumstances determine 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 subject property.

### **Alternatives**

- (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 side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the ohana dwelling to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied

with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the ohana dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical.

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

#### **Intent and Purpose**

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

#### **The Variance application meets criterion (c) for the following reasons:**

The intent and purpose of requiring building setbacks for 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 encroachment of 0.60 feet (7.2 inches) into the side (west) yard setback area is miniscule, but it exceeds the limit of falling under the De Minimis exception. The granting of the setback variance still allows for adequate air circulation as the affected area.

Objections were not received from the adjacent owner, the surrounding property owners or general public in response to the Notification of Surrounding Property Owners.

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 purposes of the Zoning Code, Subdivision Code and the County General Plan. 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**

Based on the variance application's survey map, the ohana dwelling built upon the subject property ("LOT 34") will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance conditions.

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CG Hawaii Realty Corp.  
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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. Should the ohana dwelling built 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.
4. 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 initiate proceedings to null and void Variance-14-000257.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR14-000257TMK2-4-040-034Baba.doc.rtf

xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

Lilian Matayoshi  
CG Hawaii Realty Corp.  
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DAVID Y. IGE  
GOVERNOR OF HAWAII



KEITH YAMAMOTO  
ACTING DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: December 19, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

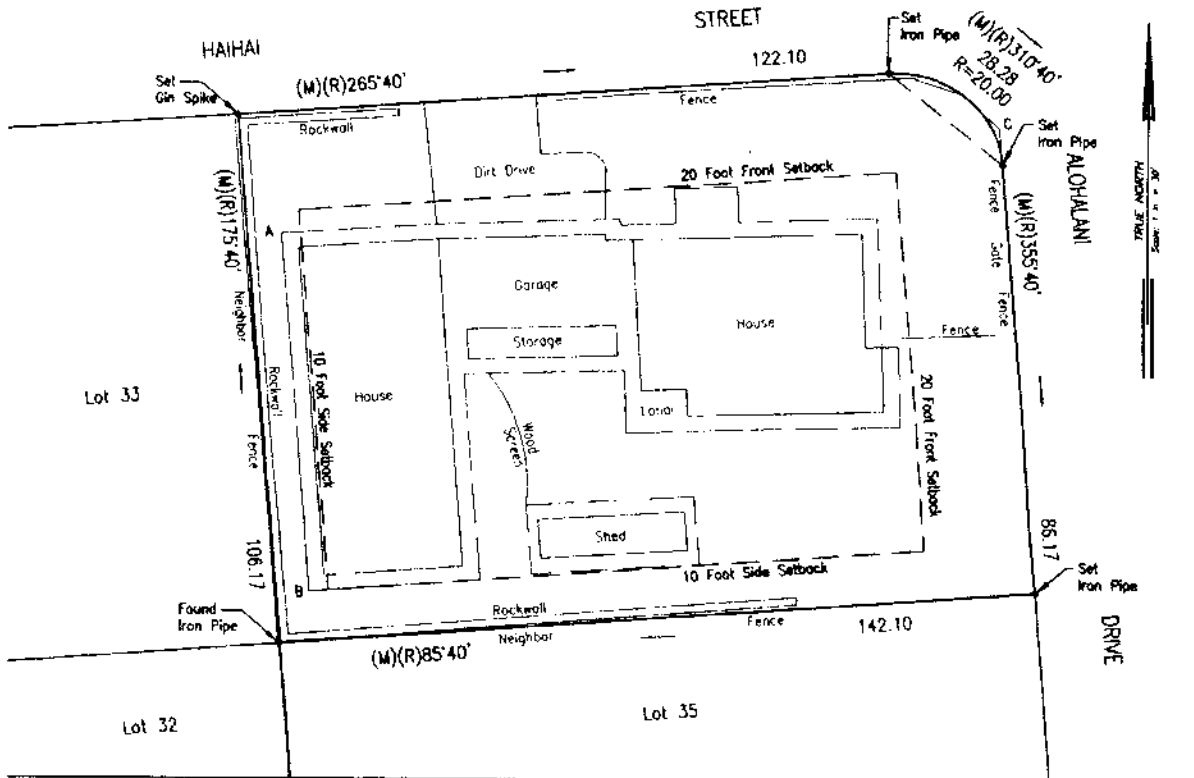
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Section 25-5-7 Minimum Yards and Article 4, Division 4,  
Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements (Encroachment into the Side  
(West) Yard Setback).  
Tax Map Key: 2-4-040:034

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

WORD: VAR 14-000257 ni

095980

K-2 SURVEY  
 LOT 34  
 FILE PLAN No. 696  
 HAWAII FAIRWAY SUBDIVISION  
 WAIAKEA, SOUTH HILO, ISLAND OF HAWAII, HAWAII  
 TMK: (3rd) 2-4-040: 034



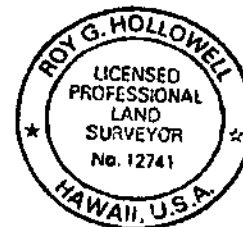
Notes

Scale: 1"=30 feet

1. Corner marker shown as found was accepted. Corner markers shown as set established based upon found corner markers within the subdivision. The measured dimensions (M) are within acceptable tolerances to record dimensions (R) for this type of land.
2. Building setback lines per County of Hawaii Planning Department.
3. Improvement Notes:  
 A. Northwest house roof eave 6.5 feet from property line (PL) and northwest house corner 9.4 feet from PL.  
 B. Southwest house roof eave 6.5 feet from PL and southwest house corner 9.4 feet from PL.  
 C. Fence corner 1.3 feet into Alohala Drive.
4. Survey performed at the request of Mark Cox and Ron Wood.

This survey was performed by me or under my direct supervision on November 3, 2014

*Roy G. Hollowell*  
 Roy G. Hollowell  
 Licensed Professional Land Surveyor  
 Certificate Number 12741  
 Expires: April 30, 2016



Island Boundary  
 RR 3, Box 81571, Pahoa, HI 96778  
 (808) 345-1561  
 Evan Wallman - Owner