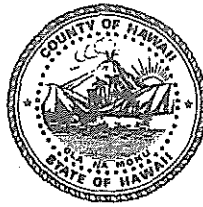


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

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

July 6, 2009

Ms. Lori Mikkelsen  
ALL AINA SERVICES  
P.O. Box 291  
Laupahoehoe, HI 96764

Dear Ms. Mikkelsen:

**SUBJECT: VARICANCE-VAR 08-053**

**Applicant: ALL AINA SERVICES**

**Owners: WILLIAM GARY OWENS, ET AL.**

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

**TMK: 7-3-028:003; Lot 39**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance-VAR 08-053 subject to variance conditions. The variance permits portions of the detached greenhouse of "POOL HOUSE" to remain upon Lot 39 with a minimum 14.66 feet to a minimum 20.30 feet front yard and attendant minimum 13.33 feet to minimum 19.57 feet front yard open space in lieu of the required minimum 25 feet front yard and attendant minimum 19 feet front yard open space pursuant to the plot plan or survey map dated March 3, 2008. The variance is from the subject property's minimum front yard and attendant minimum front yard open space requirements pursuant to the Hawaii County Code, 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, (a).

### BACKGROUND AND FINDINGS

1. Location. The subject property, consisting of approximately 23,436 square feet of land, is situated within the Kona Coast View Subdivision, Unit 6, Increment 1, North Kona, Hawai'i. The subject property's street address is 73-1022 Ahikawa Street. The subject property is zoned Agriculture - 5 Acres (A-5a) by the County and designated Agriculture or "A" by the State Land Use Commission (LUC).

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2. Variance Application-Site Plan. The owner's representative submitted the variance application, attachments, and filing fee on August 13, 2008 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 The Pattison Land Surveying, Inc. The variance site plan or survey map, dated March 3, 2008, denotes portions of the greenhouse of "POOL HOUSE" is built into the minimum 25 feet front yard setback and minimum 19-foot wide front yard open space.
3. Ohana Dwelling Permit (OD 89-185) was approved on September 21, 1988 to allow for the second dwelling situated on the subject site. The site plan in the ohana dwelling permit file denotes location of "GREENHOUSE" abutting "DECK" and "POOL".
4. County Building Records:
  - a. Hawaii County Real Property Tax Office records indicate building permit (71944) was issued to the subject property for the construction of a single family dwelling consisting of 2 bedrooms, 2-bath with living, dining, kitchen and carport.
  - b. Building Permit (885897) was issued to permit construction of a Ohana dwelling consisting of 1 bedroom, family room, kitchen and 1 bath.
5. Variance Application (VAR 08-053)-Agency Comments and Requirements:
  - a. The State Department of health (DOH) memorandum dated October 10, 2008 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
6. Notice to Surrounding Property Owners. A copy of first notice and second notice sent by the applicant via USPS to surrounding property owners and mailing certificates was submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on August 13, 2008 and October 21, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 15, 2008.
7. 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.

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 25 feet front yard. The variance application's site plan denotes the location of the greenhouse of "POOL HOUSE" upon "Lot 39". Pursuant to the applicant background information, the owner was unaware of any encroachments into the minimum front yard setback. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the detached greenhouse of "POOL HOUSE" into the property's minimum 25 feet front yard setback and attendant minimum 19 feet front yard open space required by the Zoning Code.

Although it was determined that all structures have received final building permit approval during escrow, building permit records are vague as to whether the detached greenhouse of "POOL HOUSE" has a building permit. Therefore, the applicant shall secure an as-built building permit for the Pool House after the variance request has been approved.

### ALTERNATIVES

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

Remove the building encroachments and/or redesigning or relocating the dwelling being constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code.

Another alternative is to consolidate the subject tax map key property with the road right-of-way (Ahikawa Street) fronting the subject property and resubdivide consolidated property to modify property lines and adjust minimum front yard setback. It is felt, that this option is not practical and reasonable

### 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 portion of the greenhouse of "POOL HOUSE" was improperly situated on the subject property, which went undisclosed until it was disclosed at the time of sale of the property. The survey map prepared for the landowner shows the extent of the encroachment within the minimum front yard and its open space requirement. It appears that the Pool House, in its current location, is not physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the roughly 23-plus years of existence of the structure. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties 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. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portions of the dwelling constructed into the affected side yard denoted on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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.

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

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

1. The applicant or owner(s), 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 a "POOL HOUSE" constructed upon subject TMK property or "LOT 39"

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according to survey map dated March 3, 2008 or building previously identified and denoted as "GREENHOUSE" on site plan in Ohana Dwelling Permit (OD 88-185) file in the Planning Department will not meet the property's minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan or current survey map of the subject TMK property or "LOT 39" dated March 3, 2008. The approval of this variance permits portions of "POOL HOUSE" or position of "POOL HOUSE" to remain upon subject TMK property or "LOT 39" by variance in accordance with survey map dated March 3, 2008.

4. The applicant or current owner(s) shall contact the DPW-Building Division (Kona) regarding status of greenhouse constructed upon TMK property circa September 21, 1988 or construction of "POOL HOUSE" denoted on survey map dated March 3, 2008. The current owner(s) shall secure any building permit or associated construction permits, if necessary, to permit "POOL HOUSE". Any current or active building permits issued to subject TMK property shall be completed or "finaled" by the DPW-Building Division prior to any future sale of subject TMK property or change in title or ownership.
5. Building improvements and permitted uses constructed pursuant to OD 88-185 and future building additions 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 08-053 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Kona Office  
Real Property Tax Office (Kona)