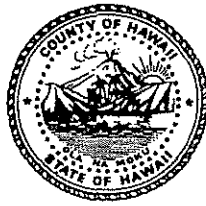


William P. Kenoi
Mayor



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

October 25, 2010

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

Dear Ms. Mikkelson:

SUBJECT: VARIANCE: VAR 09-003
Applicant: ALL AINA SERVICES
Owners: DHHL (Lessee-Roland Shimaoka, Sr.)
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-1-021:068 (Lot 34A-2)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-003 (VAR 09-003) subject to variance conditions. The variance permits portion of the re-built dwelling, including attendant roof eaves, to remain upon the subject property with a minimum 7.4 feet side yard(s) and attendant minimum 4 feet side yard open space in lieu of the required minimum 10 feet side yard and 5 feet side yard open space requirement, pursuant to the plot plan submitted to our office on January 4, 2010. The variance is from the subject property's minimum side yard and minimum side open space requirements pursuant to the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 (2), 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 21,906 square feet of land, is situated within the Keaukaha Track 1, Waiākea, South Hilo, Hawai'i. The subject property's street address is 1262 Kalaniana'ole Avenue.

2. Zoning: The subject property is zoned Single Family Residence – 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 January 28, 2009, and other submittals related to the variance request and variance application. The variance application's plot plan map is drawn to scale and denotes portions of the as-built dwelling constructed into the minimum 10 feet side yard setback and minimum 5-foot wide side yard open space.

The applicant's variance application was acknowledged by letter dated February 6, 2009, and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an additional time extension to provide for sufficient review.

4. County Building Records: Hawai'i County Real Property Tax Office records indicate that a building permit (25655) was issued on March 7, 1962, for the construction of a 3 bedroom and 1 bathroom Single-Family Dwelling. On March 27, 1976, building permit No. 770604 was issued for the construction of a 528 square feet family room addition to the existing dwelling.
5. Variance Application (VAR 09-003)-Agency Comments and Requirements:
 - a. The State Department of Health (DOH) memoranda dated February 11, 2009 and July 21, 2009 (refer to memoranda in variance file).
 - b. The Department of Public Works (DPW) memoranda dated March 4, 2009 and August 17, 2010 (refer to memoranda in variance file).
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 February 18, 2009, and February 28, 2009 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 14, 2009.
7. Comments from Surrounding Property Owners or Public:
 - a. Objection letter dated March 5, 2009 and received on March 10, 2009, signed by Christopher P. Schlueter, Attorney-at-Law.
 - b. Support letter received March 5, 2009, signed by Moses M. Kaikuaana.

- c. Support letter dated March 2, 2009 and received on March 5, 2009, signed by Wanda M. Neves.
- d. Support letter dated March 2, 2009 and received on March 3, 2009, signed by Helen Henderson.
- e. Support letter dated March 2, 2009 and received on March 3, 2009, signed by Samson B. Wana, Jr.
- f. Support letter dated March 3, 2009 and received on March 3, 2009, signed by Rachelle Whitney.
- g. Support letter dated March 2, 2009 and received on March 3, 2009, signed by Monique M. Hoke.
- h. Support letter received on March 3, 2009, signed by Diane U. Armitage.
- i. Support letter received on March 3, 2009, signed by Ernest K. Cann.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant on behalf of the owner/lessee submitted the variance application to address the existing 2-story dwelling encroachments within the property's minimum 10 feet side yard setback. The variance application's plot plan denotes the location of the existing dwelling upon "Lot 34-A-2." The site plan shows the existing dwelling is 7.4 feet from the left (east) side property line. Pursuant to the applicant's background information, the owners were uncertain of the extent of the potential encroachment until an "As-Built" survey was conducted by Paul H. Murray and Associates on January 4, 2010, revealing the setback violations. No evidence has been found to show indifference or premeditation by the owner to intentionally construct a portion of the existing 2-story dwelling into the property's minimum 10 feet side yard setback and attendant minimum 5 feet side yard open space required by the Zoning Code.

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 redesign or relocate the as-built single-family dwelling constructed upon the subject property to fit within the correct building envelope

denoted on the revised survey map, as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

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.

Therefore, given the circumstances, it is our opinion that the current location of the improvements denoted on the site plan is not physically and/or visually obtrusive from other properties situated within the immediate area. 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 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 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/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 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 change from time to time.
4. Portions of the as-built single family dwelling and open carport/shed/eaves upon the subject property (LOT 34 A-2) will not meet the minimum side yard requirements

Ms. Lori Mikkelson
Page 5
October 25, 2010

pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map.

5. Should the single family dwelling and open carport/shed/eaves (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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 09-003 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:kwr

O:\Variances\Zone2\VAR-09-003TMK2-1-021-068Shimaoka.doc

xc: Real Property Tax Office (Hilo)

Mr. Christopher P. Schlueter
Law Offices of Steven D. Strauss
P. O. Box 11517
Hilo, Hawai'i 96721