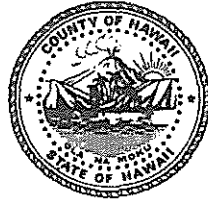


William P. Kenoi  
Mayor



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

February 10, 2010

Jerry P. Craven  
HC 1 Box 5219  
Kea'au, Hawai'i 96749

Dear Mr. Craven:

**SUBJECT: VARIANCE– VAR-09-058**  
**Applicant: JERRY P. CRAVEN**  
**Owners: JERRY P. CRAVEN**  
**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: 1-6-065:049 (Lot 24)**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-058 (VAR 09-058) subject to variance conditions. The variance permits portions of the Single Family Dwelling to remain upon Lot 24 with a minimum 7.56 feet to minimum 8.97 feet side yard and attendant minimum 4.78 feet to minimum 5.00 feet side yard open space and the detached "Water Tank" to remain upon Lot 24 with a minimum 17.07 feet rear yard. The variance is from the subject property's minimum side and rear yard and minimum side 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, consists of 12,000 square feet in land area and is situated within the Ainaloa Subdivision, Puna, Hawai'i. The subject property's street address is 16-2068 Plumeria Drive. The subject property is zoned Agriculture – 1

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Acres (A-1a) by the County and designated Agriculture or "A" by the State Land Use Commission (LUC).

2. Variance Application-Site Plan. The applicant on behalf of the owners submitted the variance application, attachments, and filing fee on November 17, 2009 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 Independent Hawaii Surveyors, LLC. The variance site plan map, dated December 2, 2009, denotes the position of the Single Family Dwelling and detached "Water Tank" upon the subject property and that portion of the Single Family Dwelling and detached Water Tank constructed into minimum 10-foot wide side and 20 foot rear yard setback and minimum 5-foot wide side yard open space.
3. County Building Records:  

Hawaii County Real Property Tax Office records indicate that a building permit (B2007-2987H) was issued to the subject property for the construction of a single family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen, dining area, open covered deck, and carport/storage and a galvanized steel water tank.
4. Variance Application (VAR09-058)-Agency Comments and Requirements:
  - a. The State Department of Health (DOH) memorandum dated December 2, 2009 states:  

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. The Department of Public Works (DPW) had no comments, memo dated December 15, 2009.
5. Notice to Surrounding Property Owners. The applicant filed a transmittal letter dated and copy of notices sent to surrounding property owners via USPS to the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notice was mailed on November 29, 2009 and January 19, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 23, 2009.
6. 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.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the Single Family Dwelling and detached water tank encroachments within the property's minimum 10 feet side and 20 feet rear yard. The variance application's site plan denotes the location of the Single Family Dwelling and water tank upon "Lot 24". Pursuant to the applicant's background information, "The owners were unaware of any encroachment when they built the dwelling and would not have discovered any problems affecting the Single Family Dwelling and detached water tank until a modern survey was conducted on November 16, 2009 by The Independent Hawaii Surveyors, LLC revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the Single Family Dwelling and detached Water Tank into the property's minimum 10 feet side and 20 rear 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 front and rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the Single Family Dwelling and Water Tank constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks. Given the location of the encroachments (side and rear yard), consolidation/resubdivision with the adjoining property would not be practical.

### 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 Single Family Residence and detached water tank was improperly situated on the subject property, which went undisclosed until a modern survey was completed. The survey map prepared for the landowner shows the extent of

the encroachment within the minimum side and rear yard and its open space requirement. It appears that the Single Family Dwelling and detached water tank, 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 2-plus years since the Single Family Dwelling and detached water tank was being constructed. 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 representative's request for 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.

The applicant's variance application was acknowledged by letter dated November 30, 2009 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time to decide on the variance application to February 15, 2010.

#### 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, 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 TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
4. The as-built Single Family Dwelling and water tank to be built upon the subject

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property ("LOT 24") will not meet the minimum side and rear yards pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits portions of the as-built Single Family Dwelling and water tank to remain upon subject TMK property or "LOT 24" according to the site plan map submitted with the variance application.

5. Should the as-built Single Family Dwelling and water tank (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new Single Family Dwelling and water tank 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 - 09-024 null and void.

Sincerely,

  
BJ LETTHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)