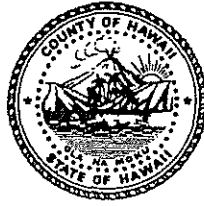


William P. Kenoi
Mayor



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

June 7, 2010

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

Dear Ms. Mikkelson:

SUBJECT: VARIANCE APPLICATION – VAR-09-061

Applicant: ALL AINA SERVICES
Owners: AARON AND APRIL MAUDLIN
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: 7-3-039:057, Lot 238

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-061 (VAR: 09-061), subject to variance conditions. The variance will allow a portion of the "Single Story Dwelling" constructed on Lot 238 to remain with a 8.9 feet side yard in lieu of minimum 10.0 feet side yard setback. The applicant requests variance to permit portions of the dwelling "to remain in place" into and upon the property's affected minimum 10.00 feet side yard. 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 10,350 square feet of land, is situated within the Kona Palisades Subdivision, Kalaoa 5th, North Kona, Hawai'i. The subject property's street address is 73-4337 Wanane Street.

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2. **Zoning:** The subject property is zoned Agricultural – 5 acres (A-5a) by the County and designated Agriculture 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 December 18, 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 Roy G. Hollowell, LPLS. The variance site plan or survey map denotes that portion of the “Single Story Dwelling” built into the minimum 10 feet side yard setback.
4. **County Building Records:**
 - a. Hawai‘i County Real Property Tax Office records indicate that a building permit (0275) was issued on June 20, 1977 for the construction of a single story dwelling consisting of 3 bedrooms, 2-baths.
5. **Variance Application (VAR: 09-061)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated May 11, 2010 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. The Department of Public Works (DPW) Memorandum dated May 19, 2010 states:

“Building shall conform to all requirements of code and statutes pertaining to building construction.”
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 March 23, 2010 and May 14, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 13, 2010.

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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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the single family residence encroachment within the property's minimum 10 feet side yard setback. The variance application's site plan denotes the location of the single-family dwelling upon "Lot 238". Pursuant to the applicant's background information, the owners were unaware of any encroachment when they purchased the property and would not have discovered any problems affecting the single family dwelling until a modern survey was conducted on October 9, 2009 by Roy G. Hollowell LPLS, 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 into the property's minimum 10 feet side yard setback 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 side-yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the Single-Family dwelling 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 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.

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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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the 32 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.

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 property, subject to provisions of the Zoning Code or State Law which may be changed from time to time.
4. The existing dwelling constructed upon the subject property ("Lot 238") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map dated October 9, 2009. The approval of this variance permits the existing dwelling to remain upon the subject property or "Lot 238" in accordance to the survey map dated October 9, 2009.
5. Should the as-built, single-family dwelling (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

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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 09-061 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)