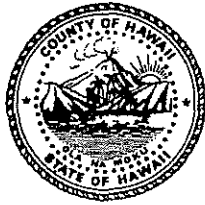


William P. Kenoi
Mayor



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

August 25, 2010

Ms. Lori Mikkelson
All Aina Services
P. O. Box 291
Laupahoehoe, Hawai'i 96764

Dear Ms. Mikkelson:

SUBJECT: VARIANCE- VAR-10-012
Applicant: ALL AINA SERVICES
Owners: STAN & LINDA PETERSON
**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, (a)**
TMK: 1-5-044:136 (Lot 296)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-012 (VAR 10-012), subject to the following conditions. The variance will allow portions of the single family dwelling with a minimum 19.70 feet to a minimum 19.07 feet side yard to remain on the subject property in lieu of the minimum 20.0 feet side yard(s) requirement pursuant to the variance application site plan dated April 8, 2010. The variance is from the subject property's minimum side yard requirements pursuant to the Hawai'i 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 43,560 square feet in land area and is situated within the Hawaiian Paradise Park Subdivision, Land Court Application 1053, Map 58, Puna, Hawai'i. The subject property's street address is 15-1379 19th

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Avenue. The subject property is zoned 1 Acre (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 April 21, 2010, and other submittals related to the variance request and application. The variance application's site plan map is drawn to scale and prepared by Roy G. Hollowell, LPLS, dated April 8, 2010.

3. County Building Records:

Hawai'i County Real Property Tax Office records indicate that a building permit (B2005-2105H) was issued to the subject property for a single-family dwelling consisting of 4 bedrooms, 2 bathrooms, living room, kitchen and dining area, carport/storage and Doughboy Swimming Pool type Water Tank..

4. Variance Application (VAR 10-012)-Agency Comments and Requirements:

a. The State Department of Health (DOH) memorandum dated May 17, 2010, 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, according to memo dated June 3, 2010.

5. Notice to Surrounding Property Owners.

The applicant filed a transmittal letter and copy of the notices was 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 notices were mailed on April 28, 2010 and May 21, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 17, 2010.

6. Comments from Surrounding Property Owners or Public.

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-residence encroachments within the property's minimum 20 feet side yard. Pursuant to the applicant's background information, the applicant stated in part, "*Margaret Gould (the seller) purchased the property from a contractor who neglected to mention the setback issues in disclosures. During the current selling process, a survey was performed and setback encroachments were discovered. As shown on the survey, the west corners of the house are 0.93' and 0.30' into the setback area.*" No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling and open carport/shed/eaves into the property's minimum 20 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 side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the Water Tank constructed upon the subject property to fit within the correct building envelope denoted on the recent plot 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.

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 three 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.

The applicant's variance application was acknowledged by letter dated May 10, 2010, 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 August 31, 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 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. The single-family dwelling built upon the subject property (LOT 296) will not meet the minimum side yard requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map.
5. Should the 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 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.

Lori Mikkelson
All Aina Services
Page 5
August 25, 2010

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-10-012 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)