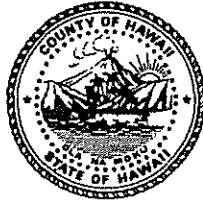


William P. Kenoi  
Mayor



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

September 24, 2010

Mr. Thomas Stevens  
TNS Construction Company  
P. O. Box 6219  
Hilo, HI 96721

Dear Mr. Stevens:

**SUBJECT: VARIANCE: VAR-10-014**  
**Applicant: TNS CONSTRUCTION CO. /THOMAS STEVENS**  
**Owners: CRAIG FUJIOKA**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 13, Section 25-5-136, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements**  
**TMK: 2-2-050:014 (Lot 7)**

After reviewing your submitted variance application and information, the Planning Director certifies the approval of VARIANCE-VAR 10-014 subject to variance conditions. The variance will allow the proposed Office and Retail Building to be constructed with a minimum 4-foot side yard setback and open space requirement in lieu of the property's minimum 10-foot side yard setback and minimum 5-foot side yard open space requirement. The variance is from Chapter 25, Zoning, Article 5, Division 13, Section 25-5-136, Minimum Yards, 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 22,500 square feet of land, is situated at the corner of Hinano and Kāwili Streets, portion of Waiākea House Lots Extension, Hilo, Hawai'i.

**Zoning:** The subject property is zoned Industrial-Commercial Mixed – 20,000 square feet (MCX-20) by the County and designated Urban, or "U," by the State Land Use Commission (LUC).

2. **Variance Application-Site Plan:** The owner submitted the variance application, attachments, and filing fee on April 20, 2010, and other submittals related to the variance request and application. The variance application's plot plan map is drawn to scale and prepared by Christopher Garland, P.E.. The variance site plan denotes the portions of the proposed Office and Retail Building to be constructed into the minimum 10 feet side yard setback and minimum 5-foot wide side yard open space (located along the northern boundary line).
3. **Variance Application (VAR 10-014)-Agency Comments and Requirements:**
  - a. The State Department of Health (DOH) memorandum dated July 29, 2010 states:  
  
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments have been received from the Department of Public Works (DPW) as of this date.
4. **Notice to Surrounding Property Owners.** A copy of first and second notices, sent by the applicant via USPS to surrounding property owners, and mailing certificates were submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on April 20, 2010 and August 25, 2010, respectively. Notice of this application was published in the Hawaii Tribune-Herald and West Hawaii Today on July 31, 2010.
5. **Comments from Surrounding Property Owners or Public:** No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owner, submitted the variance application to allow the proposed Office and Retail Building to be constructed into the 10-foot side yard setback and 5-foot open space as required by the Zoning Code.

The application identifies that the adjacent properties along the northern boundary are zoned Single Family Residential – 10,000 square feet (RS-10), thus requiring a 10 foot side yard setback for the subject property. Should these properties become zoned

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Industrial, then the subject's side yard setback would be none. The subject neighborhood is designated Industrial by the Hawai'i County General Plan, which would further allow the surrounding properties to become zoned Industrial.

Given the location of the project site and the building design, it is felt that the proposed Commercial building will not be out of character with other buildings within the subject neighborhood.

### ALTERNATIVES

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

Redesign or relocate proposed office and retail building on the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. This alternative is not reasonable or practicable because it would result in expensive modifications to the proposed building.

Another alternative is to consolidate the subject property with the adjoining two properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. This requirement would not be feasible because it would create two non-conforming properties not meeting minimum building site area requirements.

### 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.

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 comments or objections from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

### PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

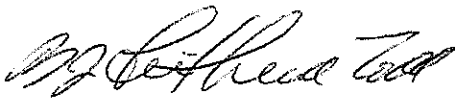
This variance application is approved subject to the following variance conditions:

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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. The applicant shall submit an Application for Plan Approval and required submittals to the County of Hawai'i Planning Department for review and secure Final Plan Approval (FPA) before submitting detailed building plans and specification for a County Building Permit.
4. Building improvements on the subject property are subject to State law and County ordinances and regulation pertaining to building construction and building occupancy. The proposed Office and Retail Building shall be constructed in accordance with approved building plans and building specifications.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 10-014 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)