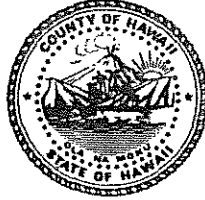


William P. Kenoi
Mayor



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 27, 2010

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

Dear Ms. Mikkelson:

SUBJECT: VARIANCE- VAR-10-019

Applicant: ALL AINA SERVICES

Owners: LYDIA HAMMACK & JOHN LAUREANO

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: 1-4-058:123 (Lot 1091)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-019 (VAR 10-019), subject to the following conditions. The variance will allow portions of the single family dwelling and open carport/shed/eaves with a minimum 3.09 feet side yard to remain on the subject property in lieu of the minimum 8.0 feet side yard(s) requirement and 4 feet open space pursuant to the variance application site plan dated March 29, 2010. The variance is from the subject property's minimum side yard and 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 8,040 square feet in land area and is situated within the Nānāwale Estates Subdivision, Unit 2, Puna, Hawai'i. The subject

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property's street address is 14-3417 Moloka'i Street. The subject property is zoned Agricultural – 1 Acre (A-1a) by the County and designated Urban or "U" 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 May 6, 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 March 29, 2010.

3. County Building Records:

Hawai'i County Real Property Tax Office records indicate that a building permit (B2007-2232H) was issued to the subject property for a two-story, single-family dwelling consisting of 1-bedroom, 1-bathroom, living room, kitchen and dining area, carport/storage and 4-foot-high Doughboy swimming pool type water tank.

4. Notice to Surrounding Property Owners.

The applicant filed a transmittal letter and copy of the notice, which were 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 May 14, 2010, and August 2, 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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owner, submitted the variance application to address and/or resolve the single-family residence and open carport/shed/eaves encroachments within the property's minimum 8-foot side yard. Pursuant to the applicant's background information, the applicant stated in part, *"The owners have just purchased the subject parcel. During the purchasing process, a survey was performed and setback issues became apparent. The carport itself is 3.20 ft. to 4.13 ft. into the east side setback. The carport eave is from 3.79 ft. to 4.91 ft. into the east side setback. The rear south left house corner is 1.06 ft. into the side setback. The water heater shed is 2.60 ft. into the side setback."* 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 8-foot 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.

Based on the foregoing findings and unusual circumstances, the representative'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.

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 TMK 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 1091) 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 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 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- 10-019 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

Ms. Lori Mikkelson
All Aina Services
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xc: Real Property Tax Office (Hilo)