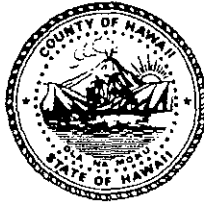


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kaiiua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

## County of Hawai'i

### PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

August 29, 2012

Lori Mikkelson  
All Aina Services  
P. O. Box 291  
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

**SUBJECT: VARIANCE: VAR-10-042**

**Applicant: ALL AINA SERVICES**

**Owners: CAROL E. WILLIAMS TRUST**

**Request: Variance from Chapter 25, Zoning, Section 25-5-76,  
Minimum Yards, (a), Section 25-5-77 Other Regulations,  
and Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements**

**TMK: 1-5-025:150 (Lot 475)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 10-042 (VAR 10-042), subject to conditions. The variance will allow portions of the two story single family dwelling to remain on Lot 475, with a minimum 17.89-foot side yard setback and attendant roof eave with a minimum 3.93-foot side yard open space. This allowance is in lieu of the required minimum 20 foot side yard and associated 14 foot side yard open space requirement. This variance is from the subject property's minimum side and associated side yard open space 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 Section 25-4-44(a) Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of 1.00 acre in land area and is situated within the Hawaiian Paradise Park Subdivision, Portion of Block 9, District of Puna, Hawai'i. The subject property's street address is 15-2021 14<sup>th</sup> Avenue.
2. **Zoning.** The subject property is zoned Agricultural – 1 acre (A-1a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).

2. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 15, 2010. The variance application's site plan map is drawn to scale, and prepared by Niels Christensen, LPLS, (The Independent Hawaii Surveyors, LLC) and denotes the position of the single family dwelling constructed into minimum 20-foot side yard setback and associated 14-foot side yard open space requirement.
3. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#841869) was issued to the subject property for a two-story, single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area, garage and detached water tank.
4. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 27, 2010 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
  - b. The County of Hawai'i, Department of Public Works – Building Division memorandum dated August 1, 2011 (see attached memorandum).
5. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on November 17, 2010 and December 28, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2010.
6. **Comments from Surrounding Property Owners or Public.**
  - a. Objection letter received dated January 9, 2011 signed by Steve Mosesson and Patricia Mosesson (see attached letter).

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 20-foot side yard setback 14 foot side yard open space requirement. The variance application's site plan denotes the location of the two story single family dwelling upon "Lot 475" encroaches 2.11 feet into the side yard setback and the roof eave 16.07 feet into the associated side yard open space. The owners were unaware of any encroachment of the single-family residence and roof eave at the time of construction and would not have discovered any problems affecting the property until a modern survey was conducted by Niels Christensen LPLS, revealing the setback violations. The adjacent property that borders the southeast boundary of the subject property which

would be most impacted by the encroachments is vacant with existing native vegetation. The property to the northwest is also vacant and not impacted by the encroachments. It should be noted the owners adjacent to and northwest of the subject property have filed an objection to the approval of this variance. The encroachments are not adjacent to the side property boundary and are not visually perceptible from the neighboring lots or public view, due to the landscaping along the side and front boundaries. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling and attendant roof eave into the property's minimum 20-foot side yard setback and attendant minimum 14 foot side yard open space required by the Hawai'i County.

### 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 encroachment 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 properties 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 roadway lot and the adjoining property would not be practical.*

### 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 circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose 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 complaints from surrounding property owners during the roughly 28 years since the single family dwelling was constructed.

The subject variance application was acknowledged on December 20, 2010. Additional time was requested by the Planning Department to complete the variance background report requirements. The applicant granted an extension of time to render a decision on the variance application to August 31, 2012.

**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, a second single-family or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. Portion of the single family dwelling built upon the subject property ("LOT 475") will not meet the minimum side yard and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's site plan map.
5. Should the single-family dwelling (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) 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 laws 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-10-042 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

Lori Mikkelson  
All Aina Services  
Page 5  
August 29, 2012

xc: Real Property Tax Office (Hilo)

Steven and Patricia Mosesson  
143 Hood Drive  
Canfield, Ohio 44406

Lori Mikkelson  
All Aina Services  
Page 6  
August 29, 2012

NEIL ABERCHOMBIE  
SUPERVISOR

PLANNING DIVISION

OCT 15 07 AM 8:50



KEITH R. RIDLEY  
Acting Director of Health

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 918  
HONOOLULU, HAWAII 96721-0918

MEMORANDUM

DATE: December 23, 2010

TO: Bobby Jean Leithhead Todd  
Planning Director, County of Hawaii

FROM: Newton Inouye rdy  
Acting District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 10-042  
Applicant: ALL AINA SERVICES  
Owner: CAROLE E. WILLIAMS TRUST  
Request: Variance from Chapter 25, Zoning,  
Article 5, Division 7, Section 25-5-76,  
Minimum yards, and Article 4,  
Division 4, Section 25-4-44,  
Permitted projections into yards and  
open space requirements, (u)  
Tax Map Key: I-5-025:150, Lot 475

The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD:VAR 10-042.doc

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Lori Mikkelson  
All Aina Services  
Page 7  
August 29, 2012

August 1, 2011

Memorandum

TO: BJ LEYHEAD TODD, Planning Director

FROM: JAIHO CHENG, Acting Building Division Chief <sup>TZ</sup>

SUBJECT: VARIANCE APPLICATION – VAR 10-042  
Applicant: ALL AINA SERVICES  
Owner: CAROL E. WILLIAMS TRUST  
TMK: 1-5-025-150, Lot 475  
Location: 15-2021 14<sup>th</sup> Ave, Hawaiian Paradise Park Subdivision, Koaau, Puna, Hawaii 96749.

Our comments on the subject application are as follows:

- We have no comments or objections to the application.
- Approval of the application shall be conditioned on the comments as noted below.
- We oppose the approval of the application for the reasons noted below.
  - All new building construction shall conform to current code requirements.
  - The subject dwelling/structure currently has outstanding violations which shall be corrected.
  - The \_\_\_\_\_ permit for the subject dwelling was never finalized.
  - The minimum setbacks shall be maintained as follows:  
Residential structures - 5 ft. side, 3 ft. rear  
Commercial structures - 5 ft. side, 5 ft. rear
  - The projections do not meet setback requirements and should be corrected.
  - No openings in the exterior wall are permitted less than 3 ft. from the property line.
  - The exterior wall or projections shall be constructed to provide a \_\_\_\_\_ hour fire resistive occupancy separation.
  - An approved automatic sprinkler system is required to substitute.
  - The common wall shall be constructed to provide a \_\_\_\_\_ hour fire resistive area separation.
  - Others: \_\_\_\_\_

Jai Ho Cheng  
Acting Building Division Chief  
Cc: Tod Taniguchi, Doris Taketa

PLANNING DEPARTMENT  
JAN 02 2011 10:09

January 2, 2011

To: Bobby Jean Lithead-Todd, Director  
Planning Director of the County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, HI 96720

From: Steven Mosesson  
143 Hood Drive  
Canfield, OH 44406  
email: smose@canfield.com

Ph: (808) 961-8288

email: b.lithead@co.hi.us  
cc: Rachael @ [redacted]

Re: Notice of Variance Application (VAR 10-042)

Owner: Carol E. Williams Trust  
Variance from Zoning Code (Setback Variation)  
TMK: (3) 1-5-025,150  
Location: The subject property, containing one acre, is located at 15-2021 14<sup>th</sup> Ave.  
Hawaiian Paradise Park Subdivision, Keaau, Puna, Island of Hawaii

*(Please note the above information was obtained from correspondence I received regarding this Variance Application)*

Dear Ms. Lithead-Todd:

I am responding in regard to correspondence I have received regarding a request for a variance for property which is adjacent to my property at Hawaiian Paradise Park Subdivision. As per my previous conversation with the County of Hawaii Planning Department, I am contesting this variance to allow for a setback encroachment. Evidently there is a portion of the dwelling on this property that projects 2.11 feet into the side of the County Zoning Code 20 foot building setbacks of the southeast boundary and the roof of this dwelling project 16.07 feet into this same setback. This effectively reduces the County Zoning Code 20 foot building setback between our property to 3.93 ft and could effect the viable building space, size and location of any structure built on our property by myself or a potential buyer and therefore could effect the value of my property. This setback encroachment appears to be a violation of the existing County Zoning Code 20 foot building set-back and therefore I am adamantly opposed to this variance approval.

Please note that September 2009 I received a notice of a Variance Application from Mr. and Mrs. Larry Brown *(I am enclosing a copy of their notice)*. As this notice contained no information what-so-ever on what this variance entailed, we called the County of Hawaii Planning Department for information. We were instructed that the applicant for the variance is responsible for providing any details and that we should contact them. Therefore on September 8, 2009 we sent a letter to Mr. and Mrs. Larry Brown in which we requested details and an explanation of the Set-Back Variance and a copy of the Application filed with the County of Hawaii Planning Department. We further stated that this letter was not to be construed as consent, permission or agreement of their Application for a Set-Back Variance. This letter was sent via Certified Mail and copied via Certified Mail to the County of Hawaii Planning Department as well. *(Please see copies of our letter dated 9/8/09 and copies of the signed Certified mail conformation of delivery)*. We never did receive a response from Mr. and Mrs. Larry Brown in regard to our letter requesting this information.

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Lori Mikkelson  
All Aina Services  
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August 29, 2012

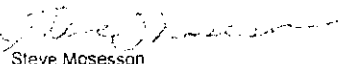
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At this time I am requesting a copy of the Building Permit that was issued for this structure which encroaches on the set-back and a copy of any surveys that were used for any permit applications or surveys used for any applications for set-back variances and copies of any actual requested setback applications. We will gladly pay any necessary charges to obtain this pertinent information.

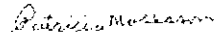
As former residents and current out-of State Hawaii property owners and tax payers for over 43 years, we depend on the County of Hawaii Planning Department to protect our rights as respected Hawaii land owners in this beautiful State. We would therefore like to request that we please receive a written response to this letter prior to January 14, 2011.

Thank you

Respectfully,



Steve Mosesson



Patricia Mosesson

cc: All Aina Services  
PO Box 291  
Laupahoehoe, HI 96764