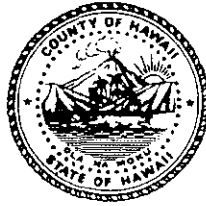


William P. Kenoi
Mayor



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

May 9, 2011

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

Dear Ms. Mikkelson:

SUBJECT: VARIANCE: VAR-10-048

Applicant: ALL AINA SERVICES

Owners: THOMAS & LAURA TRAVIS

**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, (a), Section 25-5-77 Other
regulations.**

TMK: 1-4-078:036 (Lot 5)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 10-048, subject to conditions. The variance will allow portion of the agricultural storage building to remain upon Lot 5, with a minimum 11.95 feet to 26.72 feet rear yard setback in lieu of the minimum 30.0 feet rear yard setback 24.0 feet rear yard open space requirement. The variance is from the subject property's minimum rear yard and rear 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.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of 3 acres in land area and is situated within Kapoho Papaya Farms, Koae, Puna, Hawai'i. The subject property's street address is 14-256 Papaya Farms Road. The subject property is zoned Agriculture – 3 acres (A-3a) 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,

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attachments, filing fee, and associated materials on November 29, 2010. The variance application's revised site plan map dated March 25, 2011, is drawn to scale, prepared by The Independent Hawaii Surveyors LLC, and denotes the position of the agricultural storage building constructed into the minimum 30-foot wide rear yard setback requirement.

3. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (810370) was issued to the subject property for a single-family dwelling consisting of 2 bedroom, 1 bath, 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 April 8, 2011. (Refer to memorandum in variance file)
 - b. The Department of Public Works – Building Division memorandum dated April 6, 2011. (Refer to memorandum in variance file)
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 30, 2010 and April 12, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 8, 2011.
6. **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/owner submitted the variance application to address and/or resolve the agricultural storage building, roof eave and open deck encroachments within the property's minimum 30 feet rear yard setback and 24 feet open space requirement. The variance application's revised site plan denotes the location of the agricultural storage building upon "Lot 5". The current owners were unaware of any encroachments on the subject property, and would not have discovered any problems affecting the property until a modern survey was conducted by The Independent Hawaii Surveyors, LLC, revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the structure into the property's minimum 30 feet rear yard setback required by the Zoning Code.

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ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected rear 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 revised plot plan 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, consolidation/resubdivision with 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 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 past years of existence of the structure.

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.

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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 agricultural storage building built upon the subject property ("LOT 5") will not meet the minimum rear yard setback requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map.
5. Should the agricultural storage building (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement of the agricultural storage building shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
6. The owners shall secure a building permit within six months of this variance to address the conditions set forth by the Department of Public Works, Building Division.
7. 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- 10-048 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)
✓ TMK File
Scott Leonard, Zoning Inspector