

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-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

February 21, 2012

Mr. Russell Montgomery, Project Engineer  
Engineering Partners, Inc.  
P. O. Box 4159  
Hilo, HI 96720

Dear Mr. Montgomery:

**SUBJECT: VARIANCE VAR-11-000060**  
**Applicant: ENGINEERING PARTNERS**  
**Owners: K. TANIGUCHI LTD.**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 10, Section 25-5-106, Minimum Yards, Section 25-5-108, Other Regulations and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements**  
**TMK: 2-2-040:013 (Lot 11-A-1-A)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No.11-000060 (VAR 11-060), subject to variance conditions. The variance permits portion of the proposed canopy and existing structures to remain on Lot 11-A-1-A with a 10 foot side yard setback and side yard open space in lieu of the 20 foot side yard setback and 14 feet side yard open space requirement. The variance is from the subject property's minimum yard setback requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 10, Section 25-5-106 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 consists of approximately 8.36 acres and is identified as Lot 11-A-1-A, located at the southwest corner of Puainako Street and Kanoiehua Avenue (Hawai'i Belt Road), Waiākea Homestead Houseslots, South Hilo, Hawai'i. The subject property's street address is 50 E Puainako Street.

FEB 23 2012

SCANNED

FEB 23 2012

By: \_\_\_\_\_

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2. **Zoning.** The subject property is zoned Neighborhood Commercial – 10,000 square feet (CN-10) by the County and designated Urban or "U" by the State Land Use Commission (LUC).
3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on December 20, 2011 and other submittals related to the request. The variance application's plot plan, drawn to scale and prepared by the applicant, denotes the encroachments built and planned for construction within the property's minimum 20-foot side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that the original commercial structure was built under building permit number 32102 issued on September 24, 1965 and various building permits were issued for additions and renovations.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated January 18, 2012, (Refer to DOH memorandum in variance file).
  - b. E-mail received from Department of Public Works dated February 16, 2012, (Refer to e-mail in variance file).
6. **Public Notice.** The applicant submitted a copy of the first and second notices sent to surrounding property owners including an associated affidavit. Pursuant to these submittals, it appears that the applicant's notices were mailed to the surrounding property owners by USPO on January 4, 2012 and January 23, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 24, 2012.
7. **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 owner/applicant submitted the variance application to address the encroachments of the proposed canopy and existing structure into the 20 feet side yard setback required by the Zoning Code.

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The subject property is a corner lot consisting of two front yards and two side yards. Section 25-5-106 minimum yards (2) of the Zoning Code states: "*Side yards, none except where the adjoining building site is in an RS, RD, RM, RCX, or V district. Where the side yard adjoins the side yard of a building site in an RS, RD, RM, RCX or V district, there shall be a side yard which conforms to the side yard requirements for dwelling use of the adjoining district*".

The applicant has stated that the owner (KTA) wants to implement a new electronic inventory system which requires shelter. The proposed permanent canopy structure would provide shelter for the container trucks and keep staff and equipment out of the elements. Additionally, the finished surface of the loading area sits approximately 8 to 10 feet below the grade of the neighboring residential lots.

Therefore, in order to provide a safe space for trucks, forklifts and staff, the proposed construction of the canopy would require a 10 feet encroachment into the 20 feet side yard setback. According to the applicant the proposed canopy would be a visual improvement over the temporary tents, and would help to contain noise from unloading operations. These facts comprise "special or unusual circumstances or conditions" which support granting of this variance.

### **ALTERNATIVES**

Alternatives available to the current owner to correct and/or address the encroachment into the affected side yard of the subject property include the following actions:

- Relocate the proposed canopy and/or modify the existing commercial building 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 existing commercial structure and the relocating of the receiving area operations.*
- Another alternative is to consolidate the subject property with the adjoining property. *This alternative is not practical and reasonable.*

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision or as required by zoning code are to assure that adequate air circulation and exposure to light are

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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 intent 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. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

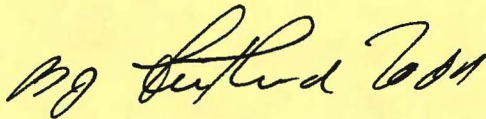
This variance application is approved subject to the following conditions:

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. The propose canopy and existing structure constructed upon the subject property ("LOT 11-A-1-A") will not meet the minimum side yard setback pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the proposed canopy and existing structure to remain upon the subject property in accordance to the plot plan dated on December 14, 2011.
4. Any further building permit and/or other construction permits issued to enlarge or change or modify the structures built upon the subject property shall be limited to the setbacks required by the underlying zoning, as modified by this variance and denoted on the plot plan dated on December 14, 2011.
5. 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.

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject VAR 11-060 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)