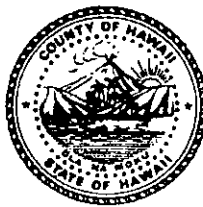


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
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**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

January 28, 2013

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

Dear Mr. Mikkelson:

**SUBJECT: VARIANCE APPLICATION – VAR-12-000110**  
**Applicant: ALL AINA SERVICES/LORI MIKKELSON**  
**Owners: DAVID K. BARCLAY**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Northern Front Yard Setback)**  
**TMK: 5-5-011:057-0001**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000110 (VAR 12-000110), subject to the following conditions. The variance allows for the “as-built” extension with a reduced front yard setback of 6 feet in lieu of the minimum 20 foot front yard setback and 14 foot open space requirement, as required under Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 (2) (B), Minimum yards, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 16,356 square feet of land, is situated within Kāhei Houselots and Portion of Hualua, Hāwī, North Kohala, Hawai'i. The subject property's street address is 55-552 A Hualua Road.
2. **Zoning.** The subject property is zoned Single Family Residential –15,000 Square Feet (RS-15) by the County and the State Land Use Designation is Urban (U).

3. **Variance Application.** The owner submitted the variance application, associated materials, and filing fee on November 29, 2012. The variance application's site plan map is drawn to scale and prepared by Roger D. Fleenor L.P.L.S. The variance site plan or survey map denotes the "as-built" portion of the ohana dwelling built into the property's minimum 20-foot wide front yard setback.
4. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that original single family dwelling permit was issued on November 11, 1995 under Building Permit No. 955955 and the ohana permit was issued on September 10, 1997 under Building Permit No.9711782.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 28, 2012. (See attached)
  - b. No comments have been received from Department of Public Works – Building Division as of this date.
6. **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, 2012 and December 15, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 16, 2012.
7. **Public Comments.**
  - a. Objection letter dated December 10, 2012 and received on December 13, 2012 by Robert Glory, Sr.
  - b. Objection letter dated December 17, 2012 and received on December 20, 2012 by Saturnino Carpio and Randall J. Carpio, Sr.
  - c. No Objection statement received on December 13, 2012 and support letter dated January 10, 2013 by Charles Raven.

#### GROUNDNS FOR APPROVING VARIANCE

##### **Special and Unusual Circumstances.**

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously

interferes with the best use or manner of development of the property.

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 20-foot front yard setback requirement. The variance application's site plan denotes the location of the "as-built" extension upon "Unit 1". The applicant has stated in its background report that the owner built the extension to provide a safe and secure residence for his teenage son and was unaware that the affected area required a front yard setback in lieu of a side yard setback. Also, the owner assumed that because his CPR Unit consists of 8,280 square feet, his setbacks were 8-foot side yard setback and 15-foot front yard setback. Because Condominium Property Regime (CPR) does not subdivide a property, the Planning Department recognizes the entire parcel area for setback purposes; therefore, the subject property requires a 20-foot front yard setback and 10-foot side yard setback.

### **Alternatives**

(b) There are no other reasonable alternatives that would resolve the difficulty.

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the as-built water tank and work shed constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

Another alternative is to consolidate the subject property with the adjoining front property which is a roadway lot and to resubdivide the property to modify property lines and adjust minimum yard setbacks. This alternative is not feasible and/or practical.

### **Intent and Purpose**

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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.

Letters of objection were received from Robert Glory, Sr., whose property is located on the south side of the subject property and Saturninio Carpio, whose property is located to

the north expressed concerns to the variance application.

Mr. Glory has stated that Mr. Barclay was informed by Mr. Michael F. Stevenson owner of CPR Unit 2 (Unit B), that the "as-built" extension was built over the common area "right-of-way. However, on September 27, 2010 both Michael F. Stevenson and David K. Barclay amended the Declaration of Condominium Property Regime and Condominium Map (Map No. 3041), moving the common area right-of-way from the northern boundary to the southern boundary removing any encroachment over the right-of-way.

Also, no objection was received by Mr. Stevenson, owner of CPR Unit 2 regarding the variance application.

1. Mr. Saturninio Caprio expressed concern of flooding on to the access road along the northern boundary and that the extension encroaches onto the access roadway. The "as-built" extension does not encroach onto the private roadway easement. There is a "no access planting screen easement" along the northern boundary that prevents Mr. Barclay from using the private roadway easement to access his property. The applicant has stated that Mr. Barclay has a drywell on his property and a six (6) foot high wooden fence along the northern boundary, preventing any water from flowing onto the dirt roadway easement.

It should also be noted the Mr. Charles Raven owner of Parcel 52, located to the west, which the private roadway easement traverses over, supports the variance application (see attached support letter). Therefore the extension of the dwelling does not impact the roadway.

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.

#### **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

Lori Mikkelson  
All Aina Services  
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agents under this variance or relating to or connected with the granting of this variance.

3. The approval of this variance permits the ohana dwelling with carport to remain upon the subject property in accordance to the survey map dated August 31, 2010.
4. Should the improvements constructed upon the subject property be destroyed by fire or other natural causes, the replacement structures shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 12-000110 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Kona Planning  
Horace Yanagi, Zoning Inspector - Kona Planning  
Real Property Tax Office (Kona)

Lori Mikkelson  
All Aina Services  
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NEIL ABERCROMBIE  
GOVERNOR

PLANNING DEPARTMENT  
COUNTY OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
Director of Health

2012 DEC 31 AM 10:36

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 28, 2012

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

FROM: <sup>for</sup> Newton Inouye *EA*  
District Environmental Health Program Chief

SUBJECT: Application: Variance- VAR 12-000110  
Applicant: ALL AINA SERVICES/ LORI MIKKELSON  
Owner: DAVID K. BARCLAY  
Request: Variance from Chapter 25, Zoning, Section 25-5-7, Minimum  
Yards and Section 25-4-44(a), Permitted Projections into Yards  
and Open Space Requirements (Encroachment into Northern  
Front Yard Setback)  
Tax Map Key: 5-5-011:057-0001, Lot 3-A-1

Wastewater Branch has no objections to the setback variance. However, the existing cesspool as utilized is considered to be Large Capacity by the current EPA standards. Please be aware that the maximum number of bedrooms per IWS (cesspool or septic) is five.

EPA has a Large Capacity Cesspool (LCC) rule which requires all large capacity cesspools to be removed from service by April 5, 2005. If two (2) dwellings are connected to an existing cesspool, EPA will consider the cesspool as a large capacity cesspool regardless of the total number of bedrooms. Even if the total number of bedrooms were reduced to five (5) or less, the existing cesspool will still be considered as a large capacity cesspool by EPA. (A septic system designed for five (5) bedrooms would be allowed under both State and Federal rules.)

WORD: VAR 12-000110.ch

