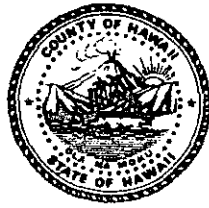


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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

January 6, 2014

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

Dear Ms. Mikkelson:

SUBJECT: Application: Variance VAR-13-000178
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owners: JAMES AND BARBARA PEREZ
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into East Side Yard Setback)
TMK: 2-5-057:014 (Lot 14)

The Planning Director certifies the **approval** of Variance 13-00178, subject to conditions. The variance will allow portions of the detached water tank to remain on Lot 14, with a minimum 6-foot side (east) yard setback and associated side (east) yard open space. This allowance is in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space requirement. This variance is from the subject property's minimum side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76 (a), Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.0041 acres and is situated within the Kaumana City Subdivision, Ponahawai, South Hilo, Hawai'i. The subject property's street address is 25-3302 Opalipali Street.
2. **County Zoning.** Agricultural – 20 Acres (A-20a).
3. **State Land Use Designation.** Agricultural.

4. **Setback Requirements.** 30-feet for front and rear; 20-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 15, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, undated, received on November 5, 2012, denotes portion of the existing detached water tank into the minimum 20-foot rear yard and 14-foot side yard open space.

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached water tank into the 20-foot east side yard and 14-foot east side yard open space, as required by the Zoning Code.

The survey map shows that portions of the detached water tank encroaches 14 feet into the 20-foot side (east) yard setback and 8 feet into the 14-foot side (east) yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#891329) was issued on July 5, 1989 to the subject property for a single-family dwelling consisting of a 5 bedroom, 3.5 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 2, 2013. (Refer to attached DOH memorandum).
 - b. The Department of Public Works Building Division email dated November 18, 2013. (Refer to attached DPW e-mail)
8. **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 5, 2013 and November 14, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 26, 2013.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter sent via e-mail dated December 5, 2013 from M. Bocalbos. (See attached objection letter.)

GROUNDS 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 Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached water tank into the 20-foot side (east) and 14-foot (east) yard open space as required by the Zoning Code.

The site prepared by Lori Mikkelson (All Aina Services) shows that portions of the detached water tank encroaches 14 feet into the 20-foot side (east) yard setback and 8 feet into the 14-foot side (east) yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 1989 nearly 24 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, special circumstances exist which justify the current placement of the water tank and requiring movement would interfere with the best use of the property.

Alternatives

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

The Variance application meets criterion (b) for the following reasons:

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 as-built, water tank constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the detached water tank was in compliance with all County

requirements. To deny this variance would require the owner to relocate the water tank, which would involve the owners to do major excavation to their property, requiring them to replace and move existing pipe lines.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

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 Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot 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. 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:

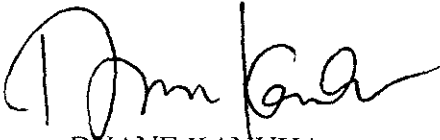
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

Lori Mikkelson
All Aina Services
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3. No permit shall be granted to allow an ohana 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. The water tank built upon the subject property ("LOT 14") will not meet the minimum side yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the water tank 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 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 initiate proceedings to null and void Variance-13-000178.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR13-000178TMK2-5-057-008Perez.doc.rtf

xc: Real Property Tax Office (Hilo),
Gilbert Bailado, GIS

Lori Mikkelson
All Aina Services
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January 6, 2014

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 DEC -3 AM 10: 02



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

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

MEMORANDUM

DATE: December 2, 2013

TO: Duane Kahuna
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 13-000178
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owner: JAMES AND BARBARA PEREZ
Request: Variance from Chapter 25, Zoning, Article 5 Division 7
Section 25-5-76 Minimum yards (Encroachment into the
East Side Yard Setback)
Tax Map Key: 2-5-057:014, Lot 14

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR 13-000178.ni

088803

2-S-057:014

Nakayama, Larry

From: Matsumoto, Joy
Sent: Monday, November 18, 2013 9:30 AM
To: Nakayama, Larry
Subject: VAR 13-000178

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 NOV 18 PM 1: 44

Hi Larry,

Building has no objections to this variance since we don't have setback requirements for water tanks.

Joy Matsumoto

Supervising Building Inspector
County of Hawaii
Tel. (808) 961-8471
Fax (808) 961-8410
Email: jmatsumoto@co.hawaii.hi.us

