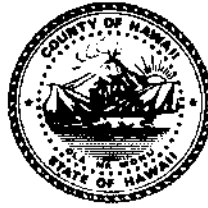


William P. Kenoi
Mayor



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

February 13, 2015

Lori Mikkelson
All Aina Services
P. O. Box 291
Laupahoehoe, Hawai'i 96764

Dear Ms. Mikkelson:

SUBJECT: Application: Variance VAR-14-000236
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owners: RAYMOND AND DARELLYN WENGLER
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(a). Permitted Projections into Yards and Open
Space Requirements (Encroachment into the Southeast Side
Yard Setback).
TMK: 1-6-056:033 (Lot 6097)

The Planning Director certifies the **approval** of VAR-14-000236 subject to variance conditions. The variance will allow the agriculture shed to remain on Lot 6097, with 3.6 feet to 3.8 feet southeast side yard setback and side yard open space. It also allows for the open carport and associated roof eave remaining with a 1.9 feet to 3 feet southeast side yard setback and side yard open space. This variance is from the subject property's minimum (southeast) side yard setback and open space requirement pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 3 acres and is located in the Hawaiian Acres Subdivision, situated in Kea'au, District of Puna, Hawai'i. The subject property's street address is 16-955 Pulelehua Road.
2. **County Zoning.** Agricultural – 3 acre (A-3a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 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 September 18, 2014. The variance site plan map is drawn to scale, prepared by Roy G. Hollowell, L.P.L.S. (Island Boundary) and denotes the position of the single-family dwelling constructed into the minimum 10-foot side yard setback. The request affects the southeast side yard setback.

The survey site plan shows that the agricultural shed encroaches 16.2 feet to 16.4 feet into the southeast side yard setback and 10.2 feet to 10.4 feet into the southeast side yard open space. It also shows that the open carport encroaches 17 feet to 18.1 feet into the southeast side yard setback and 11 feet to 12.1 into the southeast side yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#901705) was issued on July 20, 1990 to the subject property for a single-family dwelling consisting of 3 bedrooms, 2-1/2 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated October 14, 2014. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
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 September 18, 2014 and October 2, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 15, 2014.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated September 26, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to February 15, 2015.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

(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 criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot south and east side yard setback and associated roof cave into the 14-foot side yard open space as required by the Zoning Code.

The site plan shows that the agricultural shed encroaches 16.2 feet to 16.4 feet into the southeast side yard setback and 10.2 feet to 10.4 feet into the southeast side yard open space. It also shows that the open carport encroaches 17 feet to 18.1 feet into the southeast side yard setback and 11 feet to 12.1 feet into the southeast side yard open space.

The applicant has stated in its background that the agricultural shed and open carport was constructed by the previous owner; the encroachment issue was disclosed to the current owners and confirmed by a recent survey. The encroachment issues arose when the when the current owners tried to obtain building permit for the subject structure and for an addition to the existing residence.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

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

The variance application meets criteria (b) for the following reasons:

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

Remove the building encroachments and/or redesign or relocate the agricultural shed and open carport constructed upon the subject property to fit within the correct building envelope denoted on the site plan as prescribed by the Zoning Code. Any structural or design correction would require re-designing the existing structure efforts and reconstruction of the single-family dwelling. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks.

(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 criteria (c) for the following reasons:

The intent and purpose of requiring structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/ uses and boundary/property lines.

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 existence of the agricultural shed and open carport. In addition, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling, carport, and agricultural shed built upon the subject property ("LOT 6097") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 Hawai'i 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,

Ms. Lori Mikkelson
All Aina Services
February 13, 2015
Page 5

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 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. Should the single-family dwellings (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.
5. This variance does not apply to the rock wall encroachment into Pulelehua Road, this issue shall be addressed by the property owner and the Hawaiian Acres Home Owners Association.
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 proceed to declare subject Variance-14-000236 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR14-000236TMK1-6-056-033Wengler.doc

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

Ms. Lori Mikkelson
All Aina Services
February 13, 2015
Page 6

NEIL ABERCROMBIE
GOVERNOR



PLANNING DEPARTMENT
COUNTY OF HAWAII

LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

OCT 16 AM 10:03

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

MEMORANDUM

DATE: October 14, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: ^{for} Newton Inouye *EIA*
District Environmental Health Program Chief

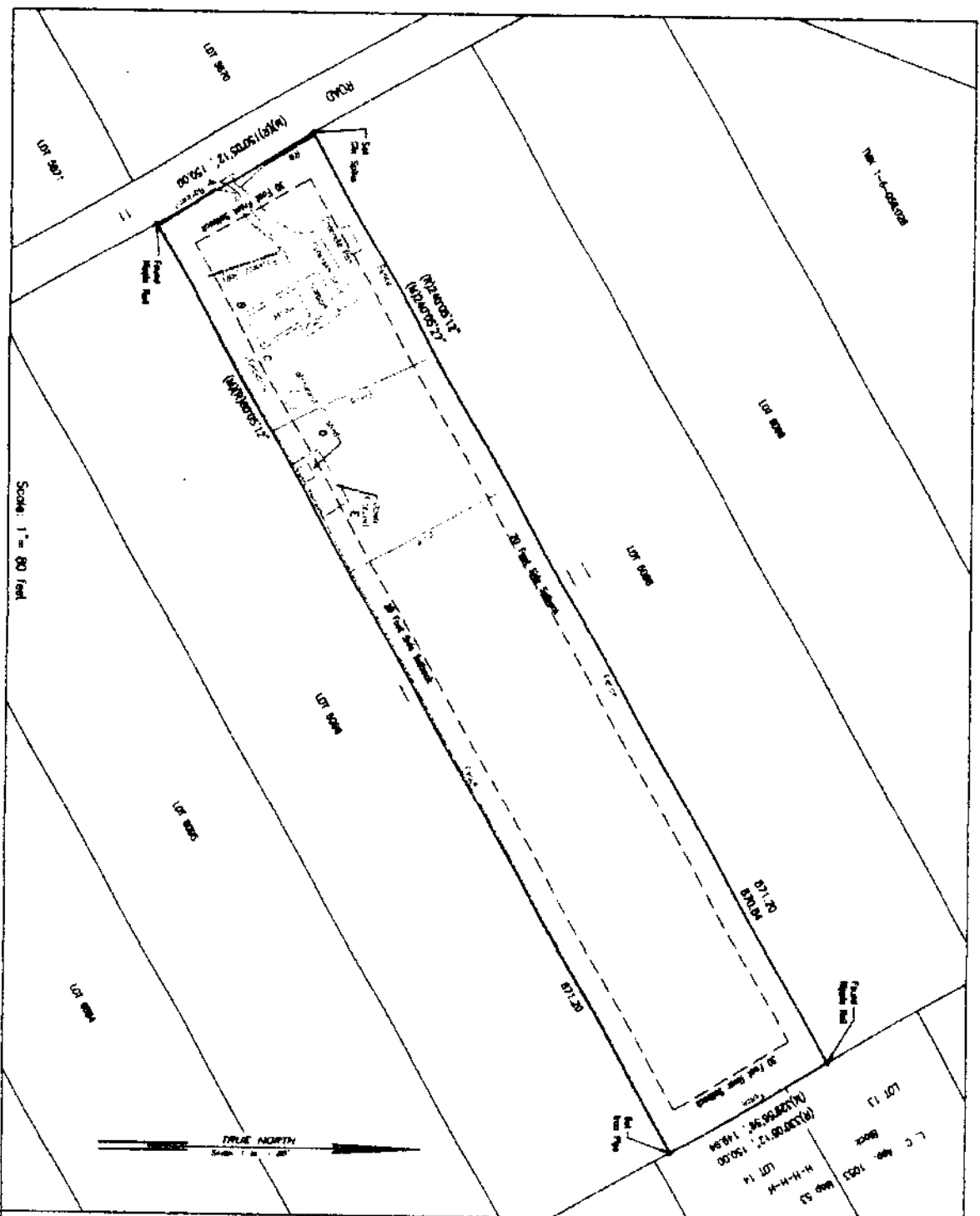
SUBJECT: Application: Variance-VAR 14-000236
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owner: RAYMOND AND DARELLYN WENGLER
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the South
And East Side Yard Setback).

TMK: 1-6-056:033; Lot 6097

Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the following: The location of all existing wastewater systems.

WORD: VAR 14-000236.eh

094811



Scale: 1" = 80 feet

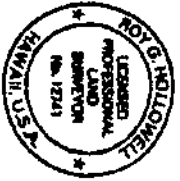
K-2 SURVEY
 LOT 8087
 LAND COURT APPLICATION 1053, MAP 49
 HAWAIIAN ACRES
 KEAAU, PUNA ISLAND OF HAWAII, HAWAII
 TAK: (3rd) 1-6-056: 033

NOTES

1. Corner markers shown as found were accepted. Corner markers shown as not established or recent positions, the measured dimensions (A) are within acceptable tolerances to record dimensions (B) for this type of land.
2. Building setback lines per County of Hawaii Planning Department.
3. Improvements shown:
 - A. Right side entry road and 1.4 feet into Road 11.
 - B. South house corner 20.8 feet and north house roof over corner 76.8 feet from property line.
 - C. East house corner 51.4 feet and east house roof over corner 27.2 feet from property line.
 - D. South shed corner 1.6 feet from property line East shed corner 3.8 feet from property line.
 - E. South corner open carport roof over 1.9 feet and east corner open carport roof over 3.0 feet from property line.
4. No reference of encroachments into Lot 8087 was discovered.
5. Survey performed at the request of Registered Engineer.

This survey was performed by me or under my direct supervision on September 1, 2014.

Ray C. Hagedorn
 Ray C. Hagedorn
 Licensed Professional Land Surveyor
 Certificate Number 12741
 Expires April 30, 2014



Bound Boundary
 per S. Dec 81571, Parcel, H 86778
 (808) 345-1361
 Fax: (808) 345-1361
 Email: hagedorn@hawaii.com