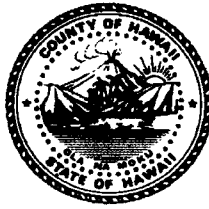


William P. Kenoi  
Mayor



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

April 15, 2015

Lori Mikkelson  
All Aina Services  
PO Box 291  
Laupahoehoe, Hawai'i 96764

Dear Ms. Mikkelson:

**SUBJECT: Application: Variance VAR-14-000237**  
**Applicant: ALL AINA SERVICES/LORI MIKKELSON**  
**Owner: ROSALIND AYOTTE**  
**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: 1-4-028:048 (Lot 3)**

The Planning Director certifies the **approval** of VAR-14-000237 subject to variance conditions. The variance will allow the agricultural shed with an 18.9-foot southeast side yard setback, the workshop with a 15.4-foot side (southeast) yard setback and the associated roof eave with a 12.5-foot side (southeast) yard open space and the catchment water tank with a 6.6-foot side (southeast) yard setback and open space to remain on Lot 3. It also allows for the carport and associated roof eave with a 1.8 side (southeast) yard setback and side (southeast) yard open space as conditioned by the Department of Public Works–Building Division. These deviations are in lieu of the 20-foot side yard setback and associated 14-foot side yard open space requirement. 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 2.932 acres and is located in the Waawaa Subdivision, situated in Waawaa, District of Puna, Hawai'i. The subject street address is 14-3945 Government Beach Road.

2. **County Zoning.** Agricultural–3 acres (A-3a).
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 October 24, 2014. The variance application's survey map is drawn to scale and prepared by Roy G. Hollowell, L.P.L.S. (Island Boundary), denotes the portion of the agricultural shed, workshop, catchment water tank, and the unpermitted open carport built into the side (southeast) yard setback and side (southeast) yard open space.

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

The survey map shows that portion of the 1) agricultural shed encroaches 1.1 feet into the 20-foot side yard setback; 2) the workshop encroaches 4.6 feet into the 20-foot side (southeast) yard setback and associated roof eave encroaches 1.5 feet into the side (southeast) yard open space; and 3) the catchment water tank encroaches 13.4 feet into the 20-foot side (southeast) yard setback and 7.4 feet into the side (southeast) yard open space. It also shows that the unpermitted carport encroaches 17.1 feet into the side (southeast) yard setback and the associated roof eave encroaches 13.9 feet into the 14-foot side (southeast) yard open space.

6. **Special Management Area.** The subject property is located within the Special Management Area (SMA). According to the acknowledgement letter dated November 21, 2014, Special Management Area Use Permit (SAA 14-1186) determined that the requested variances from the minimum side yard requirements of Chapter 25 of the Hawai'i County Zoning Code and approval of the as-built 720 square feet carport, as proposed in SAA 14-1186 are exempt from the definition of "development" and shall require no further review against the SMA Guidelines.
7. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (BP#95894) was issued on June 5, 1995, to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated October 14, 2014 (Refer to attached DOH memorandum).
  - b. The Department of Public Works – Building Division e-mail dated October 14, 2014 (Refer to attached DPW e-mail).

9. **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 22, 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.
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 April 15, 2015.
11. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

### **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 agricultural shed, workshop, catchment water tank and "as-built" carport into the 20-foot southeast side yard setback and associated roof eave into the 14-foot side yard open space as required by the Zoning Code.

The survey map shows that portion of the agricultural shed encroaches 1.1 feet into the 20-foot side yard setback and the workshop encroaches 4.6 feet into the 20-foot side (southeast) yard setback and associated roof eave encroaches 1.5 feet into the side (southeast) yard open space and the catchment water tank encroaches 13.4 into the 20-foot side (southeast) yard setback and 7.4 feet into the side (southeast) yard open space. It also shows that the unpermitted carport encroaches 17.1 feet into the side (southeast) yard setback and the associated roof eave encroaches 13.9 feet into the 14-foot side (southeast) yard open space.

It appears that the single-family dwelling, Agricultural shed, workshop, and catchment water tank were constructed nearly 20 years ago under valid building permits and other construction permits issued by the County. The current owner purchased the property in August 2014. She was informed that there might be some encroachment issues, but it was not confirmed until a survey was conducted. Therefore, no evidence has been found to show indifference or

premeditation by the owner or builder to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

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 owner 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, workshop, catchment water tank and carport 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 of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

***(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.

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.

Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the areas 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, workshop,

catchment water tank and 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.

#### **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 3") 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, their assigns or successors 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 applicant/owner, their assigns or successors, 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 agricultural shed, workshop and open carport (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. The owner shall apply for a building permit to legitimize the unpermitted carport and comply with all conditions stated in Department of Public Works–Building Division comments dated October 14, 2014.
6. The left gate post encroaching into Government Beach Road shall be relocated or removed out of the road right-of-way.
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.

Ms. Lori Mikkelson  
All Aina Services  
April 15, 2015  
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-14-000237 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:lnm

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR14-000237TMK1-4-028-048-033Ayotte.doc

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

Ms. Lori Mikkelson  
All Aina Services  
April 8, 2015  
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NEIL ABERCROMBIE  
GOVERNOR



PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

2014 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: *NS* Newton Inouye *NA*  
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-14-000237  
Applicant: ALL AINA SERVICES/LORI MIKKELSON  
Owner: ROSALIND AYOTTE  
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 Northwest  
Side Yard Setback).  
TMK: 1-4-028:048; Lot 3

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

WORD: VAR 14-000237.eh

094810

Ms. Lori Mikkelson  
All Aina Services  
April 8, 2015  
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VAR 14-000237 - Nakayama, Larry

Page 1 of 1

VAR 14-000237

2014 OCT 14 PM 2 12

PLANNING DEPARTMENT  
COUNTY OF HAWAII

Matsumoto, Joy

Tue 10/14/2014 11:48 AM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

VAR 14-00037

ROSALIND AYOTTE

TMK: 1-4-028:048

The Building Division has no issue with the setbacks for the dwelling, workshop and water tank; however, the detached carport is unpermitted. It is unclear as to whether the carport is accessory to the dwelling or for nonresidential use. If it is accessory to the dwelling then the overhang must be a minimum 1 foot 8 inches from the property line; if it is for nonresidential use then a 1 hour fire resistive wall is required without an overhang.

*Joy Matsumoto*

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: [jmatsumoto@co.hawaii.hi.us](mailto:jmatsumoto@co.hawaii.hi.us)

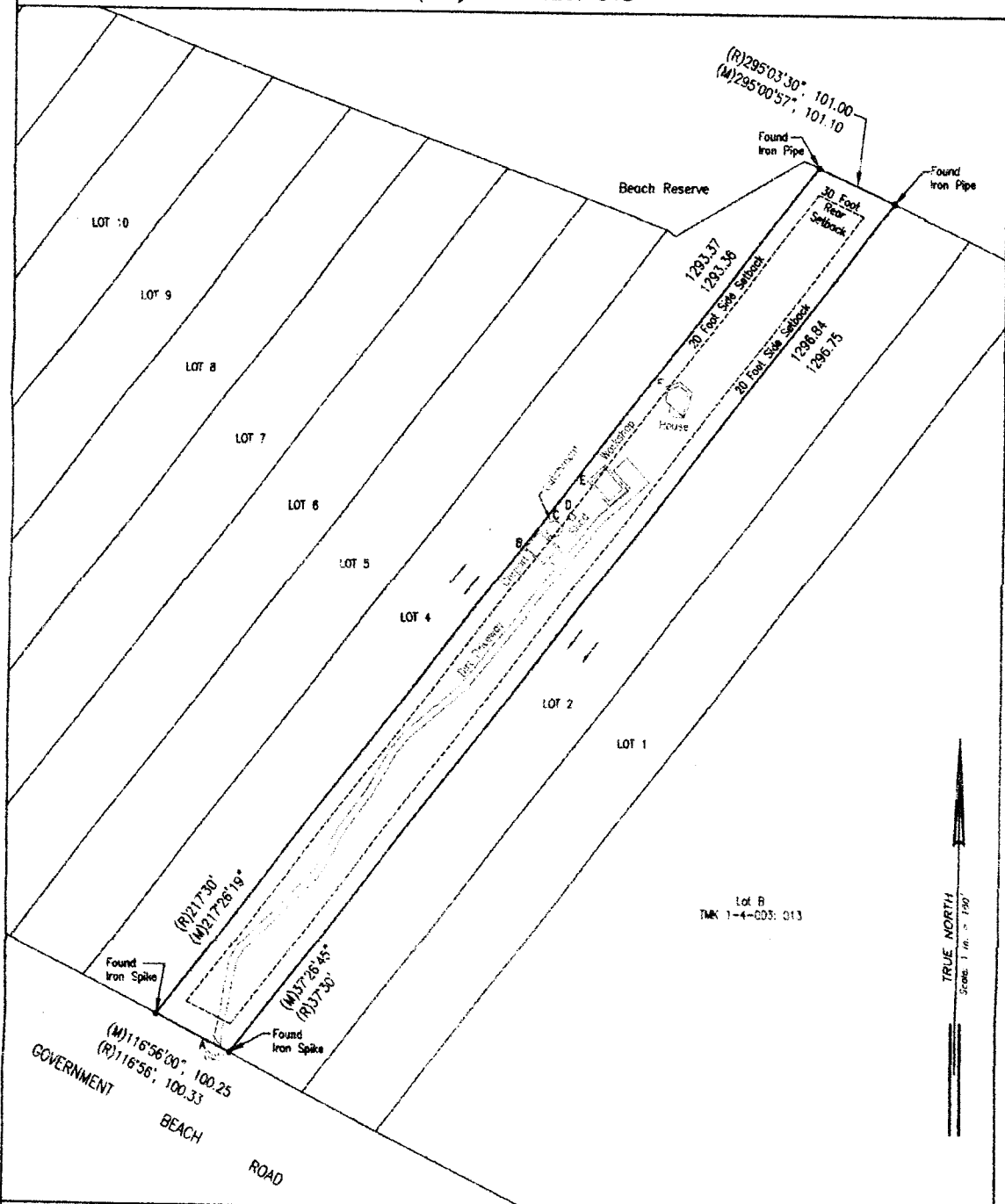
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<https://webmail.hawaiicounty.gov/owa/>

10/14/2014



K-2 SURVEY  
 LOT 3  
 PORTION OF GRANT 1,363 TO PAKAKA  
 WAAWAA SUBDIVISION  
 WAAWAA, PUNA, ISLAND OF HAWAII, HAWAII  
 TMK: (3rd) 1-4-028: 048



**Notes**

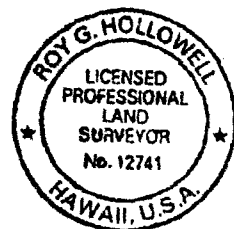
1. Corner markers shown as found were accepted. The measured dimensions (M) are within acceptable tolerances to record dimensions (R) for this type of land.
2. Building setback lines per County of Hawaii Planning Department. Setbacks are 30 feet front and rear and 20 feet on sides.
3. Improvement Notes:
  - A. Left gate post in Government Beach Road.
  - B. Carport roof eave 0.1 feet from property line (PL) and carport corner 2.9 feet from PL.
  - C. Catchment tank 6.6 feet from PL.
  - D. Shed 18.9 feet from PL.
  - E. Workshop roof eave 12.5 feet from PL and workshop corner 15.4 feet from PL.
  - F. House roof eave 17.3 feet from PL and house corner 22.4 from PL.

Scale: 1" = 160 feet

4. Survey performed at the request of Jessica Hall and Donne Duryea.

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

*Roy G. Hollowell*  
 Roy G. Hollowell  
 Licensed Professional Land Surveyor  
 Certificate Number 12741  
 Expires: April 30, 2016



Island Boundary  
 RR 3, Box 81571, Pahoehoe, HI 96778  
 (808) 345-1561  
 Evan Wallman - Owner