

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

East Hawaii Office
101 Pauahi Street, Suite 3
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February 25, 2015

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

Dear Ms. Mikkelson:

SUBJECT: Application: Variance - VAR 14-000262
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owner: FUJIE AND TOMATSU MATSUNAMI
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum Yards. (Encroachment into the
Southwest Side Yard Setback)
TMK: 4-5-020:044;Lot 1

The Planning Director certifies the **approval** of Variance 14-00262, subject to conditions. The variance will allow portion of the single-family dwelling to remain on Lot 1, with a minimum 8.7-foot side (southwest) yard setback. This allowance is in lieu of the required minimum 10-foot side yard setback. 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 1, Section 25-5-7 (a), Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 10,001 square feet and is situated within portion of Kaa, Hamakua, Kaa Homestead and Houselots, Hawai'i. The subject property's street address is 45-532 Miulana Place.
2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20-feet front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 11, 2014. The variance application's survey map was prepared by Roger D. Fleenor, L.P.L.S. denotes that a portion of the single-family dwelling encroaches 1.3 feet into the 10-foot side (southwest) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 10-foot side (southwest) yard setback, as required by the Zoning Code.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#54476) was issued on December 13, 1972 to the subject property for a single-family dwelling consisting of a 3 bedroom, 2 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated January 13, 2015.
(Refer to attached DOH memorandum).
 - b. Department of Public Works – Building Division e-mail dated December 30, 2014.
(Refer to attached DPW email).
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 December 11, 2014 and January 6, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 16, 2015.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 18, 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 27, 2015.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

GROUND 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 single-dwelling into the 10-foot side (southwest) yard setback as required by the Zoning Code.

The site prepared by Roger D. Fleenor shows that the single-family dwelling encroaches 1.3 feet into the 10-foot side (southwest) yard setback.

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 1973 nearly 31 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.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the subject 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 the single-family dwelling 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 single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

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 encroachment issue.

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.

The encroachment of 1.3 feet into the side (southwest) yard setback still allows for adequate air circulation within the side yard setback.

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 roughly 31 years since the single-family dwelling was constructed. Further, 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 unusual 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 built upon the subject property ("LOT 1") 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 Hawaii

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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. Should the single-family dwelling built 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.
4. 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.
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 initiate proceedings to null and void Variance-14-000262.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

Rie Furukawa
Pacific Coast Properties Inc
P.O. Box 1634
Honokaa, HI 96727

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All Aina Services.
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DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH
PLANNING

2015 JAN 14 10 12 13

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

MEMORANDUM

DATE: January 13, 2015

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye ↗
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000262
Applicants: ALL AINA SERVICES/LORI MIKKELSON
Owner: FUJIE AND TOMATSU MATSUNAMI
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the
Southwest Side Yard Setback.
Tax Map Key: 4-5-020:044; Lot 1

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 redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR 14-000262.n:

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PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 FEB 23 PM 1: 57

Matsumoto, Joy

Tue 12/30/2014 1:13 PM

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

Variance - VAR 14-000262
Owner: Fujie and Tomatsu Matsunami
TMK: 4-5-020:044, Lot 1

Building Division has no objections to this variance request.

Joy Matsumoto

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: jmatsumoto@co.hawaii.hi.us

096098

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

12/30/2014