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## County of Hawai'i PLANNING DEPARTMENT

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August 7, 2012

Mr. William Masters  
P. O. Box 997  
Na'alehu, Hawai'i 96772

Dear Mr. Masters:

**SUBJECT: VARIANCE APPLICATION – VAR 11-000058**  
**Applicant/Owner: WILLIAM G. MASTERS**  
**Request: Variance from Chapter 25, Zoning, Section 25-5-76, Minimum Yards, (a), Section 25-5-77 Other Regulations, and Article 4, Division 4 Section 25-4-44, Permitted Projections into Yards and Open Space Requirements**  
**TMK: 9-4-016:017 (Lot 498)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-000058 (VAR 11-000058), subject to variance conditions. The variance allows for the enclosure of the existing open lanai to remain with a minimum 12 foot rear yard setback and rear yard open space in lieu of the minimum 20-foot rear yard setback and 14-foot rear yard open space requirement. The variance is from the subject property's minimum rear yard requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards, (a), Section 25-5-77 Other regulations, and Section 25-4-44(a), Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of 14,099 square feet in land area and is situated in The Discovery Harbor-Unit I Subdivision, Unit I, shown of File Plan 1261, Nukakaia-Wai'ōma'ō, District of Kā'u, Hawai'i. The subject property's site address is 94-1667 Lewa Lani Street. The subject property is zoned Agricultural – 1 Acre (A-1a) by the County and designated Agricultural (A) by the State Land Use Commission (LUC).
2. **Variance Application-Site Plan.** The owner submitted the variance application with attachments, and filing fee on December 11, 2011, and other submittals related to the variance request and variance application. The variance application's plot plan map is

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drawn to scale and prepared by Amy Hagen-Cowell, (Architectural Designs and Drafting). The variance plot plan denotes the position of the open lanai which was built into the property's minimum 20-foot rear yard setback.

3. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (812756) was issued to the subject property for the construction of a single family dwelling consisting of 2 bedrooms, 1 bath, living room, and kitchen and dining area.
4. **Variance Application (VAR 11-000058)-Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated April 20, 2012 states:  
*"The Health Department found no environmental health concerns with regulatory implications in the submittals."*
  - b. No comments from the Department of Public Works – Building Division have been received as of this date.
5. **Notice to Surrounding Property Owners.** The applicant submitted an affidavit stating notices were sent or mailed to surrounding property owners by USPO or U.S.P.S. According to these submittals, the first and second notices were mailed via the USPS on February 29, 2012 and May 29, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 20, 2012.
6. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant/owner submitted the variance application to address and/or resolve the encroachment of the existing open lanai which is to be enclosed within the property's minimum 20-foot rear yard setback and 14-foot open space requirement. The variance application's site plan denotes the location of the existing open lanai, and other site improvements upon "Lot 498". The rear boundary of the subject property abuts the 13<sup>th</sup> hole of the Discovery Harbor Golf Course. Therefore, the encroachment of the proposed enclosure of the open lanai will not have an effect in assuring that adequate air circulation and exposure to light are available between permitted structure(s)/use and boundary/property lines. The owner became aware of the encroachment when a modern survey was done on the subject property. No evidence has been found to show indifference or premeditation by the builder to intentionally construct the open lanai into the property's minimum 20 feet rear yard setback and 14 feet open space requirement required by the Hawai'i County Code, Chapter 25 (Zoning).



### **ALTERNATIVES**

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

1. Remove the building encroachments and/or redesigning or relocating the single family dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code.
2. Consolidate the subject property with adjoining golf course and resubdivide the property to modify property lines and adjust minimum yard setbacks.

### **INTENT AND PURPOSE**

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.

It appears that the open lanai was improperly situated on the subject property, which went undisclosed until a survey was completed. The site plan map prepared for the landowner by the applicant, shows the extent of the encroachment within the minimum rear yard requirement. The rear boundary of the subject property abuts the 13<sup>th</sup> hole of the Discovery Harbor Golf Course. It appears that the enclosure of the existing open lanai, in its current location, is not physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated, to some degree, by the fact that the owner did not receive any complaint from 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 request 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.

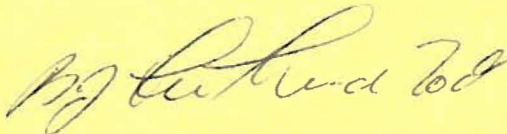


Mr. William G. Masters  
Page 4  
August 7, 2012

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.
3. No permit shall be granted to allow an ohana or second single family 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 open lanai built upon the subject property ("LOT 498") will not meet the minimum rear yard requirement pursuant to the Hawai'i County Code, Chapter 25 (Zoning), according to the variance application's site plan map. The approval of this variance permits the existing single-family dwelling to remain upon subject property or "LOT 498" according to the site plan map submitted with the variance application.
5. Should the single family dwelling (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling 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, 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 11-000058 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)