

County of Hawai'i
PLANNING DEPARTMENT

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

July 3, 2014

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

Dear Ms. Mikkelson:

SUBJECT: Application: Variance VAR-14-000206
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owners: RUSSELL R. ATKINSON & MARY ORR
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the Northeast Front Yard Setback and Southwest Rear Yard Setback)
TMK: 1-9-011:062 (Lot 139)

The Planning Director certifies the **approval** of VAR-14-000206 subject to variance conditions. The variance will allow the single-family dwelling to remain on Lot 139, with a minimum 18.1 feet southwest rear yard setback and the detached water tanks with a minimum 14.5 feet to a minimum 15.5 feet front (northeast) yard setback. This is in lieu of the required minimum 20-foot front and rear yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7, 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 11,904 square feet and is located in the Anuhea Volcano House Lots, Second Series, situated in the District of Puna, Hawai'i. The subject property's street address is 19-4259 Alanui 'I'iwi.
2. **County Zoning.** Single-Family Residential – 10,000 square feet (RS-10).

3. **State Land Use Designation.** Urban.
4. **Required Setback.** 20-feet for front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 24, 2014. The variance site plan map is drawn to scale, and prepared by Roy G. Hollow, L.P.L.S., and denotes the position of the single-family dwelling constructed into the southwest 20-foot rear yard setback and the detached water tanks constructed into the minimum 20-foot northeast front yard setback. The request affects the southwest rear yard setback and northeast front yard setback.

The survey site plan shows that the single-family dwelling encroaches 1.9 feet (22.8 inches) into the southwest rear yard setback. It also shows that the detached water tanks encroach 5.5 feet (Tank No.1) and 4.5 feet (Tank No. 2) into the northeast 20-foot front yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#861754) was issued on October 20, 1986 to the subject property for a single-family consisting of a 2 bedroom, 1 bath, living room, kitchen and dining area. A subsequent permit was issued (950286) on February 27, 1995 for the open carport.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 21, 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 March 24, 2014 and April 17, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 11, 2014.
9. **Time Extension.** The applicant's variance application was received on March 24, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until July 15, 2014.
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.

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 southwest rear yard setback and the detached water tanks into the northeast 20-foot front yard setback as required by the Zoning Code.

The site plan prepared by Roy G. Hollowell, L.P.L.S., shows that portion of the single-family dwelling encroaches 1.9 feet (22.8 inches) into the southwest rear yard setback. It also shows that the detached water tanks encroach 5.5 feet (Tank No.1) and 4.5 feet (Tank No. 2) into the northeast 20-foot front yard setback.

It appears that the single-family dwelling and detached water tanks constructed nearly 28 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling and detached water tanks did not disclose any building encroachment issues or building setback irregularities at that time.

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 as-built, two-story workshop and detached water tanks 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 would leave large and unattractive reconstruction disfigurement to the single-family dwelling. Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines.

Another alternative is to consolidate the subject property with the adjoining front and rear yard properties and to re-subdivide the property to modify lines and adjust minimum yard setbacks. However, the adjoining rear property is a Forest Reserve Parcel consisting of a 1,020.5 acre parcel and the other encroachment affects the front yard setback. To consolidate the subject property with the roadway and the adjoining rear property and to re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options.

Therefore, there are no reasonable alternatives to resolve the difficulty.

(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 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.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The adjoining rear property consisting of 1,020.5 acres is a Forest Reserve, known as the Kilauea Forest Reserve. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/ property lines.

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. The single-family dwelling and detached water tanks have been in existence for approximately 28 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the 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 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the water tank and the two-story workshop built upon the subject property ("LOT 139") 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 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 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 dwelling and detached water tanks (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. Future or new building improvements and permitted uses shall be subject to State law and

Ms. Lori Mikkelson
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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-14-000206 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha", written over the printed name.

DUANE KANUHA
Planning Director

LHN:klt

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR14-000206TMK1-9-011-062Atkinson-Orr.doc.rtf

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

NEIL ABERCROMBIE
GOVERNOR



PLA LINDA ROSEN, M.D., M.P.H.
PLANNING DIRECTOR OF HEALTH
COUNTY OF HAWAII


2014 APR 24 PM 2:53

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

MEMORANDUM

DATE: April 21, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 14-000206
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owner: ATKINSON-ORR FAMILY TRUST/
RUSSEL R. ATKINSON & MARY ORR
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
Northeast Front Yard and Southwest Rear Yard Setback)
Tax Map Key: 1-9-011:062; Lot 139

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.

REVISED SITE PLAN 5/23/14

YAK...
MORSON-ORR FAMILY TRST

IMPROVEMENT LOCATION SURVEY

PLANNING DEPARTMENT
COUNTY OF HAWAII

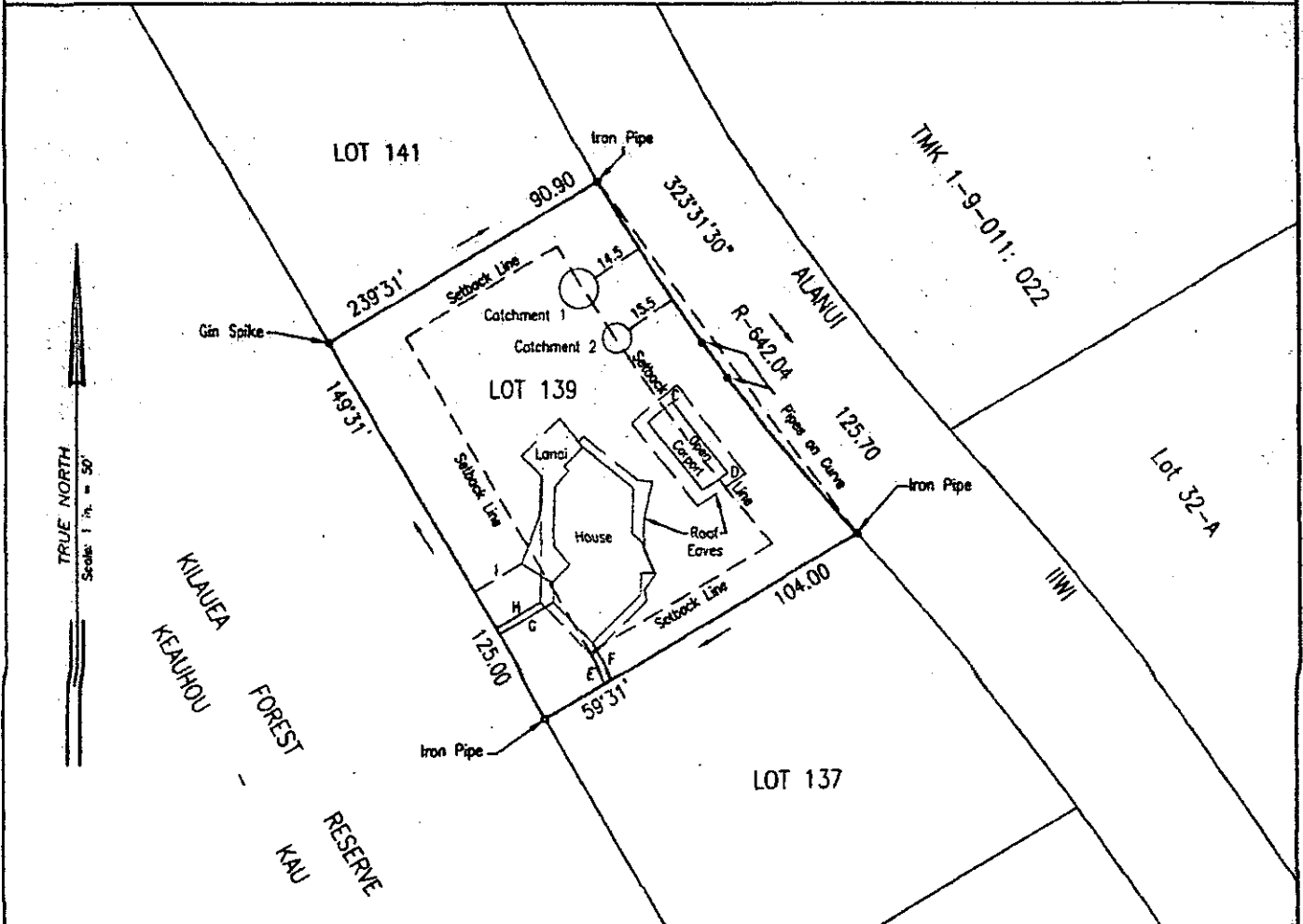
LOT 139

FILE PLAN No. 273

"ANUHEA" VOLCANO HOUSE LOTS, SECOND SERIES
OLAA, PUNA, ISLAND OF HAWAII, HAWAII

2014 JUN 10 PM 4:15

TMK: (3rd) 1-9-011: 062



Notes

Scale: 1"=50 feet

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.

F. South house corner 12.2 ft from PL.
G. House corner 18.1 from PL.
H. House roof eave 15.0 ft from PL.
I. Lanai corner 15.7 ft from PL.

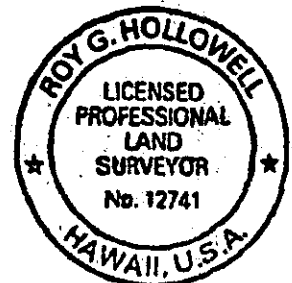
2. Building setback lines per County of Hawaii Planning Department. 20' ft front and rear and 10' ft sides.

4. Survey performed at the request of Mary Orr and Russell Atkins.

3. Improvement Notes:

- A. Catchment 1 - 14.5 ft from property line (PL)(5.5 ft into front setback).
- B. Catchment 2 - 15.5 ft from PL (4.5 ft into front setback).
- C. North carport eave 13.1 ft from PL (6.9 ft into front setback). North carport corner post 17.0 ft from PL (3.0 ft into front setback).
- D. South carport eave 13.0 ft from PL (7.0 ft into front setback). South carport corner post 17.0 ft from PL (3.0 ft into front setback).
- E. South house roof eave 9.1 from PL (0.9 ft into side setback).

This survey was performed by me or under my direct supervision on February 24, 2014.



Roy G. Hollowell

Roy G. Hollowell
Licensed Professional Land Surveyor
Certificate Number 12741
Expires: April 30, 2014

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

SCANNED
JUN 10 2014
B092388