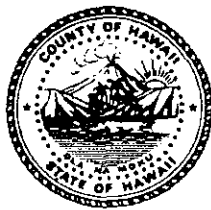


William P. Kenoi
Mayor



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

June 26, 2014

Mr. Paul H. Murray, L.P. L.S.
Paul H. Murray and Associates, LLC
P. O. Box 1189
Hilo, Hawai'i 96721

Dear Mr. Murray:

SUBJECT: Application: Variance VAR-14-000214
**Applicant: PAUL H. MURRAY & ASSOCIATES, LLC/
PAUL H. MURRAY**
Owners: PVR ENTERPRISES LLC/ LESLIE LAI
**Request: Variance from Chapter 25, Zoning, Article 5, Division
Section 25-5-7, Minimum Yards, and Article 4, Division 4
Section 25-4-44(a).(Encroachment into the East Front Yard
Setback))**
TMK: 1-5-013:047 (Lot 24-B)

The Planning Director certifies the **approval** of VAR-14-000214 subject to variance conditions. The variance will allow the single-family dwelling (Dwelling No. 2) to remain on Lot 24-B, with a minimum 18.1 feet east front yard setback. This is in lieu of the required minimum 20-foot front yard setback requirement. This variance is from the subject property's minimum east front yard setback requirement 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).

Request also to allow the single-family dwelling (Dwelling No. 1) to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy and to remain with a 9.7-foot side (north) yard setback and encroaching 0.30 feet (3.6 inches) into the side (northeast) yard setback. This shall be approved through a separate letter.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 36,509 square feet and is located in

the Old Pahoia Section, situated in Waiakahiula, District of Puna, Hawai'i. The subject property's street address is 15-2662 Pahoia Village Road, #8512.

2. **County Zoning.** Single-Family Residential - 15,000 square feet (RS-15). (Section 25-5-8. Other regulations. (a) There may be more than one single-family dwelling on each building site in an RS district provided there is not less than the required minimum building site area for each dwelling.)
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 April 28, 2014. The variance site plan map is drawn to scale, and prepared by Paul H. Murray, L.P.L.S. (Paul H. Murray & Associates, LLC), and denotes the position of the single-family dwelling (Dwelling No. 2) constructed into the minimum 20-foot front yard setback. The request affects the east front yard setback.

The survey site plan shows that the single-family dwelling encroaches 1.9 feet into the east front yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#960042) was issued on January 10, 1996 to the subject property for a single-family dwelling consisting of 2 bedrooms, 2 bath, living room, kitchen and dining area. An additional permit (#030128) was issued on January 23, 2003 for the construction of single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated May 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 May 2, 2014 and May 7, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 16, 2014.
9. **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 east front yard setback as required by the Zoning Code.

The site plan prepared by Paul H. Murray, L.P.L.S. (Paul H. Murray & Associates, LLC) shows that the single-family dwelling encroaches 1.9 feet into the east front yard setback.

It appears that the single-family dwelling (Dwelling No. 2) constructed nearly 18 years ago was 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 one-car carport with storage did not disclose any building encroachment issues or building setback irregularities at that time. Therefore, no evidence has been found to show indifference or premeditation by the owners or builders 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 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 single-family dwelling (Dwelling No. 2), 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. 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.

Because the encroachment is within the front yard setback, to consolidate the subject property with the existing roadway 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 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.

The encroachment of 1.9 feet into the front (east) yard setback still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

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 18 years since the single-family dwelling was constructed.

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

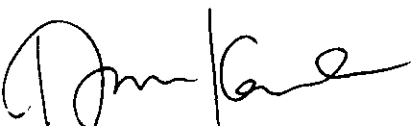
Based on the variance application's survey map, the single-family dwelling (Dwelling No. 2) built upon the subject property ("LOT 24-B") will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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, 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. The owner(s) shall apply for the De Minimis Yard Encroachment for Dwelling No. 1 within six (6) months from the date of this Variance approval letter.
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-14-000214 null and void.

Sincerely,



DUANE KANUHA
Planning Director

Mr. Paul H. Murray, L.P.L.S.

Paul H. Murray & Associates, LLC

June 26, 2014

Page 6

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

Attachment: De Minimis Yard Encroachment Application

NEIL ABERCROMBIE
GOVERNOR



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

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

MAY 23 2014
RECEIVED
COUNTY OF HAWAII
PLANNING
DEPT.

MEMORANDUM

DATE: May 21, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye *N*
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000214
Applicant: PAUL H. MURRAY ENTERPRISES, LLC/
PAUL H. MURRAY
Owner: PVR ENTERPRISES LLC/LESLIE LAI
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum Yards, Encroachment into the
East Front yard Setback
Tax Map Key: 1-5-013:047 (lot 24-B)

The Health Department found no environmental health concerns with regulatory implications in the submittals.

COUNTY OF HAWAII
PLANNING DEPARTMENT

DE MINIMIS YARD ENCROACHMENT APPLICATION

(Type or legibly print the requested information)

APPLICANT: _____

APPLICANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

LIST APPLICANT'S INTEREST IF NOT OWNER: _____

TELEPHONE: (Bus.) _____ (Fax) _____ Email: _____

LANDOWNER(S): _____

LANDOWNER SIGNATURE(S): _____ DATE: _____

(May be by letter)

ADDRESS: _____

TAX MAP KEY: _____

STREET ADDRESS OF PROPERTY: _____

ZONING: _____ SIZE OF PROPERTY: _____

DESCRIPTION OF ENCROACHING IMPROVEMENT (e.g., dwelling, garage): _____

DESCRIPTION OF CORRECTIVE ACTION THAT WOULD BE REQUIRED TO CURE
ENCROACHMENT: _____

LANDOWNER'S STATEMENT:

I hereby attest that, to the best of my knowledge and information, the improvements that are the subject of this application were placed without my actual knowledge that those improvements did not meet the minimum yard or open space requirements under the prevailing requirements of the Hawaii County Zoning Code.

Landowner's signature

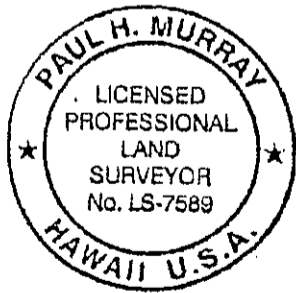
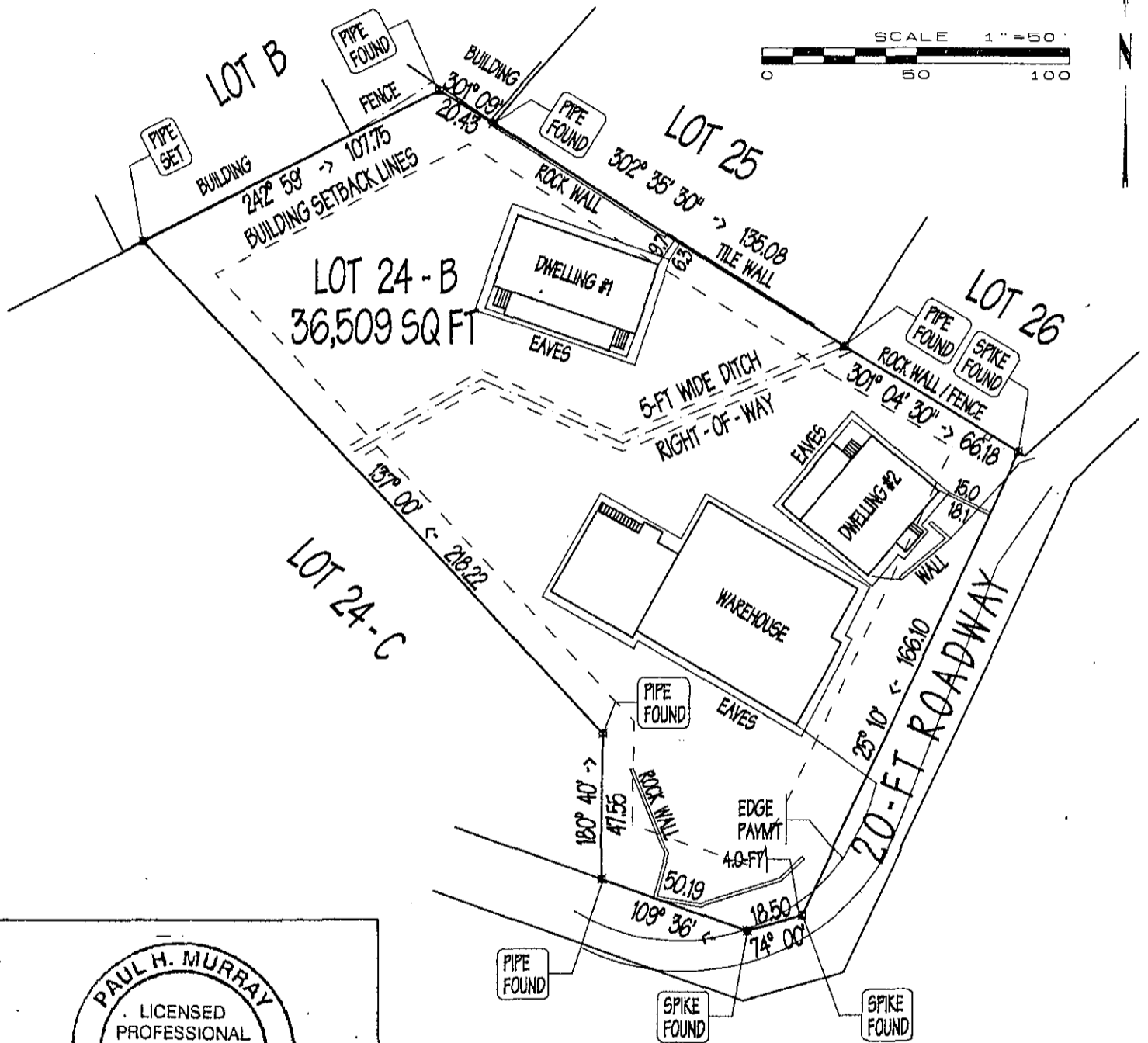
Landowner's signature

NOTES:

- 1.) A PORTION OF THE 20-FT ROADWAY PAVEMENT INTRUDES ONTO THE SUBJECT PARCEL AS DETAILED IN THE DRAWING.
- 2.) THE REMAINING IMPROVEMENTS LOCATED AND ADDRESSED ON THIS MAP CONFORM TO ACT 131, AMENDMENT TO CHAPTER 669, HAWAII REVISED STATUTES, PART II, "STRUCTURE POSITION DISCREPANCIES 0.50-FT. FOR RESIDENTIAL PROPERTY." THIS SURVEY DOES NOT APPLY TO ANY ISSUE THAT IS NOT DETAILED ON THE MAP.
- 3.) THE FRONT AND REAR YARD BUILDING SETBACKS ARE 20-FT. AND A MINIMUM CLEAR-SPACE OF 14-FT. FOR PERMITTED PROJECTIONS. THE SIDE YARD BUILDING SETBACKS ARE 10-FT. AND A MINIMUM CLEAR-SPACE OF 5-FT. FOR PERMITTED PROJECTIONS.

- 4.) THE EAST CORNER OF DWELLING #1 INTRUDES INTO THE SIDE YARD BUILDING SETBACK. THE EAST CORNER OF DWELLING #2 EXTENDS INTO THE FRONT YARD SETBACK. REFER TO THE DRAWING FOR DETAILS.
- 5.) THE ZONING CODE INFORMATION REPRESENTED IS AN INTERPRETATION OF AVAILABLE DATA AND THE COUNTY PLANNING DEPARTMENT WOULD DETERMINE IF THERE ARE VIOLATIONS TO THE ZONING CODE.
- 6.) THIS MAP WAS PREPARED SPECIFICALLY FOR THIS ACCOUNT AND SHOULD NOT, UNDER ANY CIRCUMSTANCES, BE CHANGED, ALTERED OR USED TO EXECUTE ANY OTHER APPLICATIONS.

ADDRESS: 15-2880-A PAHOA VILLAGE ROAD
 ZONING: RS-15 RESIDENTIAL



THIS WORK WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION

Paul H. Murray

PAUL H. MURRAY, LPLS
 LICENSED PROFESSIONAL LAND SURVEYOR
 CERTIFICATE NUMBER: LS-7589
 LICENSE EXPIRATION DATE: APRIL 30, 2014

SURVEY

LOT 24-B, OLD PAHOA SECTION
 WAIAKAHIULA, PUNA, ISLAND OF HAWAII, HAWAII
 SURVEY AND PLAN BY PAUL H. MURRAY & ASSOCIATES, LLC
 P. O. BOX 1189 HILO, HAWAII
 TMK (3) 1-5-013-047 2013-AUGUST-11