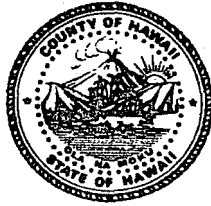


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
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**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

August 26, 2014

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

Dear Ms. Mikkelson:

**SUBJECT: Application: VARIANCE – VAR-14-000222**  
**Applicant: ALL AINA SERVICES/LORI MIKKELSON**  
**Owners: KANIKU TRUST/KAREN SCHILLING, TRUSTEE**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections Into Yards and Open Space Requirements (Encroachment into Front (East) Yard Setback and Front (East) Yard Open Space).**  
**Tax Map Key: 6-8-024:019; Lot 19**

The Planning Director certifies the **approval** of Variance No. 14-000222 (VAR: 14-000222), subject to variance conditions. The variance is to allow for the construction of a new 5 bedroom single-family dwelling with a minimum 14' 10" to a 15' 4.25" front (north) yard setback and associated roof eave with a minimum 10 feet to a minimum 13' 1.75" front (east) yard open space. This allowance is in lieu of the required minimum 20-foot front yard setback and 14-foot front yard open space. The variance is from the subject property's minimum front yard setback and front yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of approximately 19,135 square feet of land, is located within the Mauna Lani "The Cape" Subdivision, situated at Kalāhuipua'a, Anaeho'omalū, South Kohala, Hawai'i. The subject property's street address is 68-1285 Kaniku, Drive.
2. **County Zoning.** Multiple-Family Residential – 3,000 sq. ft. (RM-3).

3. **State Land Use.** Urban.
4. **Setback Requirements.** Front and Rear yards, twenty (20) feet; and Side yards, eight (8) feet for a one story building, plus an additional two feet for each additional story.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on May 19, 2014 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and denotes portions of the single-family dwelling to be constructed into the property's minimum 20-foot east front yard setback and 14-foot east front yard open space.  

The survey map shows that portions of the single-family dwelling encroaches 4' 5.75" to 5' 6.75" into the 20-foot front (north) yard setback. The roof eave and trellis are 7' 10.25" to 10 feet into the 14-foot front (north) yard open space.
6. **County Building Records.** Vacant Parcel – No building and yard improvements.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated June 12, 2014.  
(See attached).
  - b. No comments were received from the Department of Public Works Department – Building Division.
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first notices were mailed on May 9, 2014, and the second notices were mailed on July 11, 2014. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 22, 2014.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated May 29, 2014; and additional time to review the application was required. The applicant has granted the Planning Department and the Planning Director an extension of time for decision on the Variance application until August 26, 2014.

#### GROUNDS 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 criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachments of the single-family dwelling into the 20-foot front yard setback and the associated roof eave and trellis into the 14-foot front yard open space as required by the Zoning Code.

The survey map shows that portions of the single-family dwelling encroach 4' 5.75" feet to 5' 6.75" inches into the 20-foot front (north) yard setback. The roof eave and trellis encroach 7' 10.25" to 10 feet into the 14-foot front (north) yard open space.

The applicant has stated the following in its background report: *"the subject property is located in the middle of the Mauna Lani Point. The parcel is an irregular shaped due to the location of a traffic feature in the shape of a "round-about" that acts as an intersection of Kaniku Drive and South Kaniku Drive. The property covenants do not allow for driveway access into the round-about therefore, the widest spot on the property is encumbered with the proposed driveway. One third of the subject property located along the round-about has a building width of forty (40) feet or less; there is no other reasonable alternative to allow the owner's designed plan."*

Therefore, based on the above mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of sustainable property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of 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 open space of the subject property include the following actions:

Redesign or relocate the proposed single-family residence upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Given the irregular shape of the subject property and a limited driveway access onto the subject property constrict the area and placement of the proposed single-family dwelling.

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.

### **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's 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 encroachments are located in the front yard setback adjacent to the roadway. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/ property lines.

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.

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 including the Mauna Lani Point Homeowners Association. Also, the applicant has stated that there are no known restrictive covenants on the subject property.

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. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

### **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 19") does not meet the minimum front yard setback and front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following 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.
4. No permit shall be granted to allow an ohana or second family or farm dwelling upon the subject property, subject to provisions of the Zoning Code 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 proceed to declare subject Variance-VAR 14-000222 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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

Lori Mikkelson  
All Aina Services  
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August 26, 2014

NEIL ABERCROMBIE  
DIRECTOR



LINDA ROSEN, M.D., M.P.H.  
DIRECTOR OF H.E.A.H.

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 816  
HONOLULU, HAWAII 96822-0816

MEMORANDUM

DATE: June 12, 2014

TO: Duane Kanaha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR 14-000222  
Applicant: ALL AINA SERVICES/LORI MIKKELSON  
Owner: KANIKU TRUST/KAREN SCHILLING, TRUSTEE  
Request: Variance from Chapter 25, Zoning, Article 5, Division 3  
Section 25-5-36 Minimum Yards, Article 4, Division 4,  
Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements (Encroachment into the Front  
(East) Yard Setback and Front(East) Yard Open Space).  
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The Health Department found no environmental health concerns with regulatory implications in the submittals.