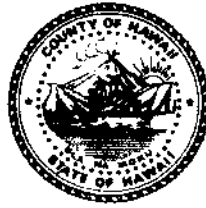


William P. Kenoi  
Mayor



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

December 8, 2014

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

Dear Ms. Mikkelson:

**SUBJECT: Application: Variance VAR-14-000239**  
**Applicant: LORI MIKKELSON/ALL AINA SERVICES**  
**Owners: LLOYD CABRAL**  
**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 Front (Northeast) Yard Setback)**  
**TMK: 2-5-014:003 (Lot 68-A)**

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The Planning Director certifies the **approval** of Variance 14-000239, subject to conditions. The variance will allow a section of the single-family dwelling to remain with a front (northeast) yard setback of 25.9 feet to 29.1 feet and associated roof cave with 22.5 feet to 23.3 feet front (northeast) yard open space. These exemptions are in lieu of the required minimum 30-foot front yard setback (20 foot-front yard setback + 10-foot road widening) with associated 24-foot front yard open space. This variance is from the subject property's minimum front yard setback and open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and 25-4-44(a), Permitted projections into yards and Open space requirement.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 11,048 square feet and is located in the Charles Chongman Subdivision, situated in Kaumana, District of South Hilo, Hawai'i. The subject property street address is 33 Chong Street.

2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet for front; 10-feet for sides. (Section 25-4-42 Corner building sites. (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.)
5. **Variance Application.** The applicant, All Aina Services, submitted the variance application, attachments, filing fee, and associated materials on September 26, 2014. The variance application's site plan map is drawn to scale and was prepared by Paul H. Murray L.P.L.S. (Paul H. Murray and Associates, LLC) and denotes the existing single-family dwelling into the front (North) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 30-foot front (north) yard setback (20-foot front yard setback + 10-foot road widening), with associated 24-foot front yard open space as required by the Zoning Code.

The survey map shows that portions of the single-family dwelling encroaches 0.9 feet (10.8 inches) to 4.1 feet into the 30-foot front (northeast) yard setback and associated roof cave encroaching 4.2 feet to 7.5 feet into the front yard open space. It also shows that portion of the rock wall/wooden fences encroaches onto Chong Street.

The current owner purchased the dwelling from the previous owner who completed the building permit.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (001483) was issued on October 31, 2000, to the subject property for the construction of a single-family dwelling, consisting of 3 bedrooms, 3 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated October 28, 2014.  
(Refer to attached DOH memorandum)
  - b. The Department of Public Works Building Division's email dated October 20, 2014.  
(Refer to attached DPW e-mail)
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 September 25, 2014

and October 14, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 15, 2014.

**9 Comments from Surrounding Property Owners or Public.** None

**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 criterion (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 30-foot front (north) yard setback (20 foot front yard setback + 10 foot road widening), with associated 24-foot front yard open space, as required by the Zoning Code.

The survey map prepared by Paul H. Murray, L.P.L.S., shows that the existing single-family dwelling encroaches 0.9 feet (10.8 inches) to 4.1 feet into the 30-foot front (northeast) yard setback and associated roof eave encroaching 4.2 feet to 7.5 feet into the front yard open space.

There is a 10-foot future road widening along Chong Street which will essentially reduce the property's usable area from 11,048 square feet to approximately 9,801 square feet. With the reduction in land area below 10,000 square feet, a 15-foot front yard setback and associated 10-foot front yard open space requirement would be appropriate. It should be noted that if the setback requirements were based on the land area being less than 10,000 square feet, the existing single-family dwelling would meet today's front yard setback and front yard open space requirements of the zoning code. However, because the future road widening has not been implemented, the 30-foot (20 foot front yard setback + 10 foot road widening) and associated 24-foot front yard open space requirements are still applicable.

With the 10-foot future road widening reducing the usable area of the subject property, provisions of Section 25-2-51, **Grounds for Variances**, would apply in its entirety, taking into consideration the very special and unusual nature created by the future road widening.

Therefore, 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.

## **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 as-built, bay window 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.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; 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 0.9 feet (10.8 inches) to 4.1 feet into the 30-foot front (northeast) yard setback and associated roof eave encroaching 4.2 feet to 7.5 feet into the front yard open space still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

Further, the encroachment into the required setback area does not encroach into the 10-foot future road widening area.

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.

Objections were not received from the adjacent owner, 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 above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

#### **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 68-A") 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 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. This variance does not apply to the encroachment issue regarding the rock wall/wooden fence encroaching onto Chong Street. The encroachment of the rock wall/wooden fence onto Chong Street shall be removed within six months from the issuance of this variance.
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. Should the single-family dwelling 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.

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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 initiate proceedings to null and void Variance-14-000239.

Sincerely,



DUANE KANUHA  
Planning Director

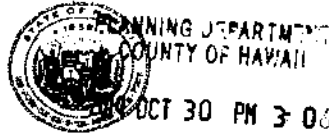
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xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

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All Aina Services  
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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

MEMORANDUM

DATE: October 28, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye   
District Environmental Health Program Chief

SUBJECT: Application: Variance 14-000239  
Applicants: ALLAINA SERVICES/LORI MIKKELSON  
Owner: LLOYD CABRAL  
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 Front  
Northeast Yard Setback.  
Tax Map Key: 2-5-014:003; Lot 68-A

Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the following:

- a. The location of all existing wastewater systems.

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VAR 14-000239 - Nakayama, Larry

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VAR 14-000239

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 OCT 20 PM 4:10

Matsumoto, Joy

Mon 10/20/2014 8:57 AM

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

Variance - VAR 14-000239

Owner: Lloyd Cabral

TMK: 2-5-014:003

Building Division has no objections to the variance request.

*Joy Matsumoto*

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: [jmatsumoto@co.hawaii.hi.us](mailto:jmatsumoto@co.hawaii.hi.us)

094901

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

10/21/2014