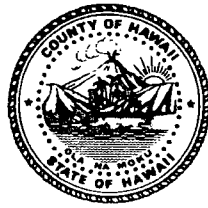


William P. Kenoi
Mayor



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

November 27, 2015

Max B. Aiona
P.O. Box 6106
Kamuela, Hawai'i 96743

Dear Mr. Aiona:

SUBJECT: Application: VARIANCE – VAR-15-000313
Applicant: MAX B. AIONA
Owners: THE MITCHELL KEALII MILLER AND SUMEA MILLER
REVOCABLE LING TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (North and East)
Yard Setback
Tax Map Key: 6-4-016:030; Lot 59

The Planning Director certifies the **approval** of Variance 15-000313, subject to conditions. The variance will allow portion of the enclosed lanai to remain on Lot 59, with a minimum 10.6-foot front (north) yard setback and associated roof eave with a minimum 9-foot front (north) yard open space, in lieu of the minimum required 15-foot front yard setback and 10-foot front yard open space. It also allows for the attached garage with a minimum 14.8-foot front (east) yard setback. These exceptions are in lieu of the required 15-foot front yard setback and 10-foot front yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 8,951 square feet of land, is located within the Nani Waimea Subdivision, situated at Kamuela, South Kohala, Hawai'i. The subject property's street address is 64-5325 Nani Waimea Street.
2. **County Zoning.** Agricultural – 1 Acre (A-1a).

3. **State Land Use.** Agricultural.
4. **Setback Requirements.** 15-foot front; 8-foot 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-Site Plan.** The applicant, Max B. Aiona, submitted the variance application, attachments, filing fee, and associated materials on August 28, 2015. The variance application's site plan map is drawn to scale and was prepared by Roger D. Fleenor, L.P.L.S., and denotes the enclosed lanai and attached garage encroaching into the front (north and east) yard setback.

The applicant submitted the variance application to address or resolve the encroachment of the enclosed lanai and attached garage into the 15-foot front (north and east) yard setback as required by the Zoning Code.

The survey map prepared by Roger Fleenor, L.P.L.S., shows that portion of the enclosed lanai encroaches 4.4 feet into the 15-foot front (north) yard setback and the associated roof eave projects 1-foot into the 10-foot front yard open space. It also shows that the attached garage encroaches 0.20 feet into the 15-foot front (east) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (035421) was issued on April 4, 2003, 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 September 29, 2015. (See attached)
 - b. The Department of Public Works Department – Building Division (Kona) Memorandum dated November 13, 2015 (See attached)
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 October 7, 2015, and the second notices were mailed on October 21, 2015. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 11, 2015.
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.

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 encroachment of the attached garage into the 15-foot front yard setbacks as required by the Zoning Code.

The survey map prepared by Roger Fleenor, L.P.L.S., shows that portion of the enclosed lanai encroaches 4.4 feet into the 15-foot front (north) yard setback and the associated roof eave projects 1-foot into the 10-foot front yard open space. It also shows that the attached garage encroaches 0.20 feet into the 15-foot front (east) yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 2003, nearly 12 years ago, were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 front yard setback of the subject property include the following actions:

Redesign or relocate the attached garage 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 corrections of the attached garage to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachments are within the front yard setbacks, to consolidate the subject property with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard open space 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.

A letter of objection was received from Mr. Rodolfo Aurello, Sr. expressing concerns to the variance application. Mr. Aurello's letter stated in part: *"I am writing this letter in response to the County of Hawai'i Variance Application notices that I received. I am the property owner of Lot No. 57 of Nani Waimea Subdivision. At this time I am not in agreement with Lot. No. 59 being sold AS-Built"*. (See attached letter). Mr. Aurello objected to the relocation of the access and utility easement from the north front yard boundary abutting the 40-foot wide road reserve to the south side yard boundary abutting Mr. Aurello's property (Lot 59). Mr. Aurello was informed that the Planning Department has no jurisdiction regarding easement on private property. And it should be dealt with the owner of the subject property. It should be noted that according to State of Hawai'i, Bureau of Conveyances records, the access and utility easement was relocated and recorded with the Bureau on June 7, 2007, prior to the Variance application being submitted to our office in 2015. He was also informed that this variance is only to allow the "as-built" enclosed lanai to remain on Lot 59, with a minimum 10.6-foot front (north) yard setback and associated roof eave with a minimum 9-foot front (north) yard open space, in lieu of the minimum required 15-foot front yard setback and 10-foot front yard open space. It also allows for the attached garage with a minimum 14.8-foot front (east) yard setback.

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 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 garage has

been in existence for approximately 12 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.

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 attached garage built upon the subject property ("LOT 59") does not meet the minimum front yard setbacks requirement 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.
3. The owners to secure a building permit for the as-built enclosed lanai within six month 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 Zoning Code or State law, which may change from time to time.
5. Should the enclosed lanai 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

Max B. Aiona
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November 27, 2015

building construction occupancy subject to provisions of the Zoning Code or State law which may change from time to time.

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-VAR 15-000313 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone6\VAR15-000313TMK6-4-016-030Miller Trust.doc.rtf

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

2015 NOV 4 PM 1:44

PLANNING DEPARTMENT
COUNTY OF HAWAII

Rodolfo Aurello, Sr.

64-5321 Nani Waimea St
Kamuela, HI 96743
808-319-8356

November 1, 2015

Planning Director - County of Hawaii
101 Pauahi St.
Hilo, HI 96720

To Whom It May Concern,

I am writing this letter in response to the County of Hawaii Variance Application notices that I received. I am the property owner of Lot No. 57 of Nani Waimea Subdivision. At this time I am not in agreement with Lot No. 59 being sold "AS-BUILT". I am willing to answer any questions or concerns pertaining to my response to these notices. You may contact me at (808) 319-8356 or by mail.

Sincerely,



Rodolfo Aurello, Sr.

101811

Max B. Aiona
Page 8
November 27, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII

2015 NOV 6 PM 2 00

PLANNING DEPARTMENT
COUNTY OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: November 4, 2015

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: **Application: Variance – VAR-15-000313**
Applicant: MAX B. AIONA
**Owner: THE MICHELL KEALII MILLER AND SUMEA
MILLER REVOCABLE LIVING TRUST**
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (North) Yard
Setback).**
Tax Map Key: 6-4-016:030; Lot 59

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



2015 NOV 17 PM 3:15

BUILDING DIVISION – DPW

PLANNING & PERMITTING
COUNTY OF HAWAII

COUNTY OF HAWAII – 101 Palahli Street, Suite 7 – Hilo, Hawaii 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

November 13, 2015

Notice Regarding: Application for variance VAR-15-000313

Applicant: MAX B. AIONA

Owner: THE MITCHELL KEALII MILLER AND SUMEA MILLER
REVOCABLE TRUST

TMK: 6-4-016:030; Lot 58

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No Building permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was not granted.

The following violations(s) still outstanding:

Building Electrical Plumbing Sign

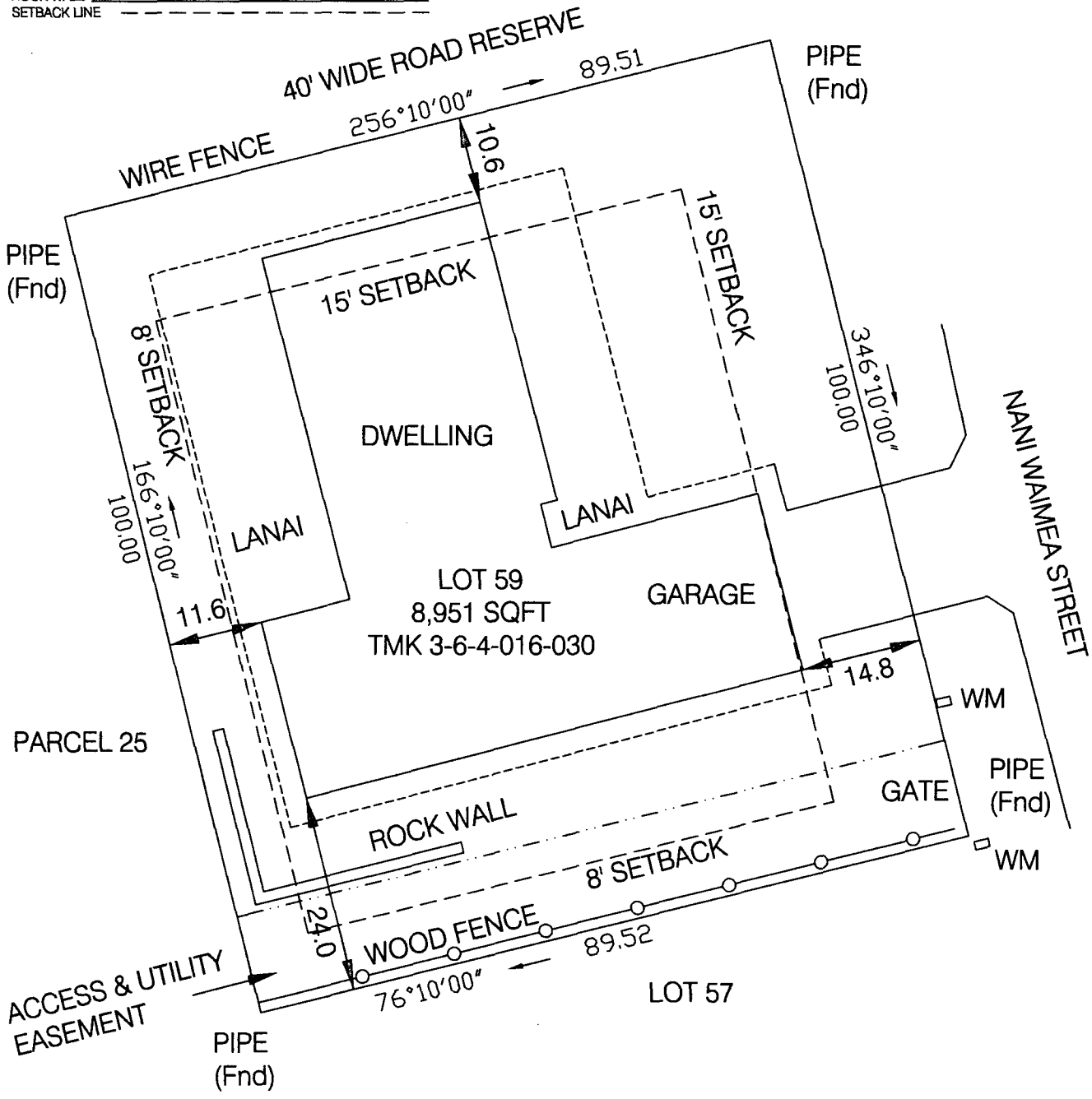
Others: Enclosed lanais appear un-permitted, see attached county record of permitted building footprint.

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Chris Domino at phone no. (808) 323-4720

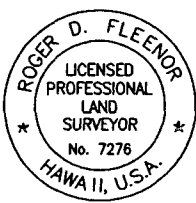
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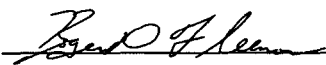
LEGEND
 HT = HAWAIIAN TELECOM
 H = HAWAII ELECTRIC LIGHT CO.
 TV = CABLE TELEVISION
 T = ELECTRICAL TRANSFORMER
 WM = WATER METER
 CO = CLEAN OUT / WASTE WATER SYSTEM
 SL = STREET LIGHT
 FND = FOUND
 ROOF EAVE -----
 ROCK WALL =====
 SETBACK LINE -----



NOTES:
 Azimuths and coordinates are referred to government Survey
 Triangulation Station "EAST BASE".
 This map represents existing conditions on September 14, 2015.

K-2 SURVEY MAP OF LOT 59
 64-5325 NANI WAIMEA STREET
 KAMUELA, SOUTH KOHALA
 COUNTY & STATE OF HAWAII
 T.M.K. 3-6-4-016-030



THIS WORK WAS PREPARED BY
 ME OR UNDER MY SUPERVISION.

 ROGER D. FLEENOR LS 7276
 My License Expires April 30, 2016

SCALE 1"=20'
 DATE OCTOBER 5, 2015