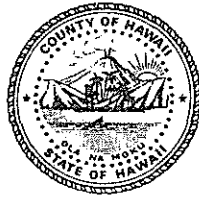


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

November 7, 2002

Mrs. Christine DeSilva, Realtor  
CLARK REALTY CORPORATION  
99 Aupuni Street, Suite No. 118  
Hilo, Hawaii 96720

Dear Mrs. DeSilva:

**SUBJECT: VARIANCE PERMIT NO. 1328 (VAR 02-041)**  
**Applicant: CHRISTINE DESILVA-CLARK REALTY CORP.**  
**Owner: ALOHAMANA, LLC.**  
**Request: Variance from Minimum Yards, and  
Minimum Open Space Requirements  
Pursuant to Chapter 25, the Zoning Code**  
**Tax Map Key: 2-2-018:001**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1328 allows portions of a 1-story open carport attached to a 2-story dwelling to remain, "AS BUILT" pursuant to the site plan map dated June 4, 2001 and subject to building requirements of the Department of Public Works (DPW). The variance request is from Lot 16's minimum 8 feet (Hilo) side yard and attendant minimum 4 feet side yard open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 2, Section 25-5-26, Minimum yards, (a) (1) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a), respectively.

### BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lots 14B and Lot 16 consisting of 7309 square feet, Wailoa Heights Lots, and situated at Waiakea, South Hilo, Hawaii. The TMK property's address is 244 Panaewa Street.

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The property is zoned Double-Family Residential (RD-3.75) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, on June 28, 2002. The variance application's site plan or survey map drawing is drawn to scale and certified by a surveyor. The survey map dated June 4, 2002 denoting the position of "TWO STORY HOUSE", "ROOF EAVES", attached "CAR PORT", "AS BUILT", and other improvements on "LOTS 14B & 16". It appears that the "CAR PORT" and other building improvements were constructed on the property prior to being purchased by the current owner. Pursuant to the circumstances and statements made by the applicant dated June 17, and July 24, 2002, it appears that no building or construction permits were issued to construct the open carport attached to the 2-story dwelling.

**Note:** The variance site plan map does not show the existing wastewater system location.

3. **Agency Comments and Requirements (VAR 02-041):**

- a. The Hawaii County Fire Department (HCFD) memorandum dated July 17, 2002, states:

"We have no comments to offer at this time regarding the above-referenced Variance application."

- b. The Department of Public Works (DPW) memorandum dated July 19, 2002, states:

"We have reviewed the subject application forwarded by your memo dated July 8, 2002 and recommend approval of the application be conditioned on the comments as noted below.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.

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Meet the fire resistive requirements of exterior walls of Table No. 5-A for R-3 occupancy and protection of projections.

Please refer questions to the Building Division at 961-8331.”

- c. The State Department of Health (DOH) memorandum dated July 26, 2002, states:

“We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained.”

3. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on June 27, 2002 and July 18, 2002 by the applicant.
4. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objections letters were received from the adjoining property owner(s):
- a. Objection letter dated July 18, 2002 from Thomas L.H. Yeh, Esq. representing Janet Chin and Ethel Tsue, co-owners of the adjoining property (TMK: (3) 2-2-018:016).

**Note:** For the record, on or about September 9, 2002, Mrs. Chin accompanied Planning Department staff during an inspection of the subject property to consider concerns. The subject property and carport improvements were viewed from the adjoining property owned by Mrs. Chin and others (Chin Property). The Chin’s Property’s “lay of the land” or yard “grade” near and along the open carport is higher than the “average grade” along the carport of the subject TMK property. The original statements made by the applicant dated June 17, 2002 and concerns and other privacy issues cited by Mrs. Chin were considered and evaluated during the site inspection.

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment issues were discovered during or after escrow or sale of the subject property. The applicant or current owner, is trying to resolve the carport encroachment issues constructed by others. It appears that the encroachment issues were not clearly known or disclosed during escrow. The variance application's site plan map was prepared by a surveyor and shows the dwelling and attached carport position, "AS BUILT", on the subject TMK property. This site plan shows that the carport and roof eaves attached to the dwelling were constructed beyond the lot's building line limits or building envelope into the subject property's respective side yard and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. The applicant or current owner became aware of the encroachment issues after the survey map was prepared.

It appears the dwelling improvements and other structures on the property were constructed on the property prior to the adoption of the Zoning Code in 1967. The attached open carport improvements do not detract from the character of the dwelling and appearance of this older residential neighborhood. The character of the neighborhood changed after 1967 and the potential building areas on the property became limited. Furthermore, it appears that no written objections or complaints were received by the County Planning Department or DPW during the construction of the "non-permitted" open carport improvements attached to the 2-story dwelling. The encroachment issues evolved during or after the sale of the property to the current owner.

### ALTERNATIVES

Alternatives available to the applicant or current owner include the following actions:

1. Remove the carport improvements or carport encroachments within the affected side yards.
2. Redesign and relocate dwelling's carport improvements to fit within the correct building envelope prescribed by the Zoning Code, and/or other similar design alternatives, etc.
3. Confer with adjoining property owners (Chin, Et al.) to consolidate the subject TMK property with the adjoining TMK property and resubdivide the resultant consolidated lot to modify the property geometry and/or change the metes and bounds descriptions in accordance with the minimum side yard and open space

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requirements of the Zoning Code.

### **INTENT AND PURPOSE**

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.

It appears that the carport improvements and encroachments within the affected yards and attendant open space requirements of the subject property were not noticeable at the time of construction. This neighborhood character and dwelling improvements on the subject TMK property were established or constructed before the Zoning Code was adopted in 1967. The 1-story open carport improvements were constructed during the 1990s without the necessary building or construction permits. And, while it is felt that that the carport addition and the carport encroachments, AS BUILT, does not detract from the character of the immediate and surrounding older neighborhood, the applicant or past and current owners need to understand and consider the feelings of the neighborhood. The privacy issues and other concerns expressed by the adjoining property owners are valid issues and should be addressed by the applicant or owners of the TMK property and that additional building measures to limit the impact of the carport location on the adjoining property need to be addressed. As such, it is felt that the applicant's variance request may be approved provided the applicant or current owner secures the "after-the-fact" county building permits to "legitimize" the 1-story open carport and that other building improvements and fence improvements be constructed, installed, and maintained along the carport improvements to buffer the carport from the adjoining property and promote privacy among the neighborhood.

The subject variance application was acknowledged by letter dated July 8, 2002. Additional time to consider the character of the area, schedule a site inspection to view the property and adjoining property, discuss the objection/concerns by an adjoining property owner(s), and examine other submittals, was deemed necessary. The applicant agreed to extend the time to November 15, 2002 to consider the variance request and render a variance decision subject to conditions.

Based on the foregoing findings, site inspection, and staff discussion with adjoining property owner, and other circumstances, the decision to approve the variance with conditions, 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

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impact to the area's character and to adjoining properties.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicant/owner(s), 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/owner(s), their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of the 1-story carport building improvements, AS BUILT, on the subject tax map key property (Lot 16) will not meet Chapter 25, the Zoning Code's minimum side yard and the attendant minimum side yard open space requirements. The approval of this variance allows portions of the 1-story open carport building improvements and encroachments identified on the variance application's site plan map dated June 4, 2002 to remain on the subject TMK property subject to the following building requirements:
  - a. An "after-the-fact" building permit for the carport improvements shall be approved by the DPW-Building Division on or before March 31, 2003. A corner of the carport and portions of the roof and gutter improvements shall be removed to comply with the building code or DPW building requirements.
  - b. The carport, roof eave and gutter improvements; including the modified gutter downspout(s) shall meet DPW building yards. Any relocated gutter improvements or downspout(s) shall be modified to direct rainwater "run-off" away from the common side boundary line between the subject TMK property and adjoining property (TMK: (3) 2-2-018:016).

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- c. The owner(s) shall construct a 14 feet high (8 feet measured from the average grade of adjoining property-TMK: (3) 2-2-018:016) or 14'-overall height) by 30 feet length privacy chainlink fence on or along the common side boundary line to buffer the carport from the adjoining property-TMK: (3) 2-2-018:016. No obnoxious landscaping materials will be permitted to grow on the 14 feet high chainlink buffer fence. The chainlink buffer fence improvement shall be installed on the subject TMK property by March 31, 2003 and maintained in association with the carport use.
  - d. The carport area may not be modified or occupied as a living area pursuant to County Building Code.
  - e. The "after-the-fact" building permit or necessary construction permits to build the 1-story open carport, gutter-downspout relocation, chainlink fence improvements, and any other related improvements shall be "finalized" or closed by the DPW on or before December 31, 2003 and prior to any further change in title or sale of the property.
  - f. The applicant or current owner shall comply with variance condition No. 3 and forward a written status report to the Hilo Planning Department-Zoning Inspector on or before January 31, 2004.
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
  5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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cc: Real Property Tax-Hilo  
Planning Dept. – Kona  
Janet Chin, Et al.  
Thomas L.H. Yeh, Esq.  
Building Division-Hilo  
Jeff Darrow-Zoning Inspector