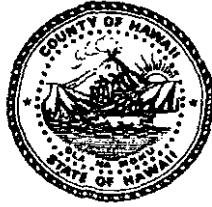


William P. Kenoi
Mayor



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

July 11, 2014

Lillian Y. Matayoshi, RS
GS Hawaii Realty Corp.
688 Kinoole Street
Hilo, HI 96720

Dear Ms. Matayoshi:

SUBJECT: Application: Variance VAR-14-000220
Applicant: LILLIAN Y. MATAYOSHI
Owners: MITSUE HAYASHIDA
Request: Variance from Chapter 25, Zoning, Article 5, Division 2,
Section 25-5-26, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements. (Encroachment into East Front Yard Setback)
TMK: 2-2-019:023 (Lot 17)

The Planning Director certifies the **approval** of Variance 14-00220, subject to conditions. The variance will allow the attached carport to remain on Lot 17, with a minimum 8.4-foot front (south) yard setback and the front (south) yard open space requirement in lieu of the minimum required 15-foot front yard setback and associated 10-foot front yard open space requirements. The variance is from the subject property's minimum 15-foot front yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 2, Section 25-5-26, Minimum yards, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.

The variance application also requested to allow portions of the single-family dwelling to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy and to remain "as built" with a 7.6-foot side (northwest) yard setback and encroaching 0.40 feet (4.8 inches) into the side (northwest) yard setback. It also requests that the storage room to remain with a 7.8 foot side (southwest yard setback and encroaching 0.20 feet (2.40 inches) into the side (southwest) yard setback. This will be reviewed separately.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 4,295 square feet and is located in

the Waialoa Heights Lots, situated in Waiakea, District of South Hilo, Hawai'i. The subject property's street address is 17 Mehau Lane.

2. **County Zoning.** Double-Family Residential – 3,750 sq. ft. (RD-3.75).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15-feet for front and rear; 8-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 12, 2014. The variance application's site plan map is drawn to scale and prepared by Roy G. Hollowell, L.P.L.S, denotes the portion of the open carport built into the front (south) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the attached carport into the 15-foot front (south) yard setback, as required by the Zoning Code.

The survey map shows that portion of the open carport encroaches 6.6 feet into the 15-foot front (south) yard setback.

6. **County Building Records.** Hawai'i County real property Tax Office records indicate that a building permit (922389) was issued on January 23, 1992 to the subject property for the construction of a single-family dwelling consisting of 3-bedroom, 2 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated June 2, 2014. (Refer to attached DOH memorandum).
 - b. The Department of Public Works Building Division email dated May 28, 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 May 20, 2014 and June 9, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 27, 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.

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 attached carport into the 15-foot front (south) yard setback as required by the Zoning Code.

The survey map prepared by Roy G. Hollowell, L.P.L.S., shows that the attached carport encroaches 6.6 feet into the 15-foot front (south) 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 1992 nearly 22 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, special circumstances exist which support the encroachment of the bay window and structure and to require movement of the window would interfere with the best use of the 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 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.

Being 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 granting of the setback variance still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

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 attached carport has been in existence for approximately 22 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i.

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 intent and purposes of the Zoning Code, Subdivision Code and the County General Plan. 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.

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 17") 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. 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 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.
5. This variance does not apply to the encroachment issues regarding the neighbor's (Lot 18) single-family dwelling roof eave and the neighbor's (Lot 4) laundry shed roof eave encroaching onto the subject property. These issues shall be addressed by the property owners affected by these encroachments. (See attached site plan for visual reference.)
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-14-000220.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR14-000220TMK2-2-019-023Hayashida.doc.rtf

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

Lillian Y. Matayoshi, RS
CG Hawaii Realty, Corp.
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July 11, 2014

Page 1 of 1

Nakayama, Larry

PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 MAY 28 PM 3:47

From: Matsumoto, Joy
Sent: Wednesday, May 28, 2014 8:53 AM
To: Nakayama, Larry
Subject: Variances

Hi Larry,

RE: VAR 14-000219, Davies and Dorian King, 1-9-o11:030
VAR 14-000220, Mitsue Hayashida Rev. Tr., 2-2-019:023


Building Division has no concerns regarding these variances.

Joy Matsumoto

Supervising Building Inspector
County of Hawaii
Tel. (808) 961-8471
Fax (808) 961-8410
Email: jmatsumoto@co.hawaii.hi.us

092082

5/28/2014



Lillian Y. Matayoshi, RS
CG Hawaii Realty, Corp.
Page 7
July 11, 2014

NEIL ABERCROMBIE
GOVERNOR PLANNING DEPARTMENT
COUNTY OF HAWAII



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

2014 JUN -3 PM 4: 22

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

MEMORANDUM

DATE: June 2, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

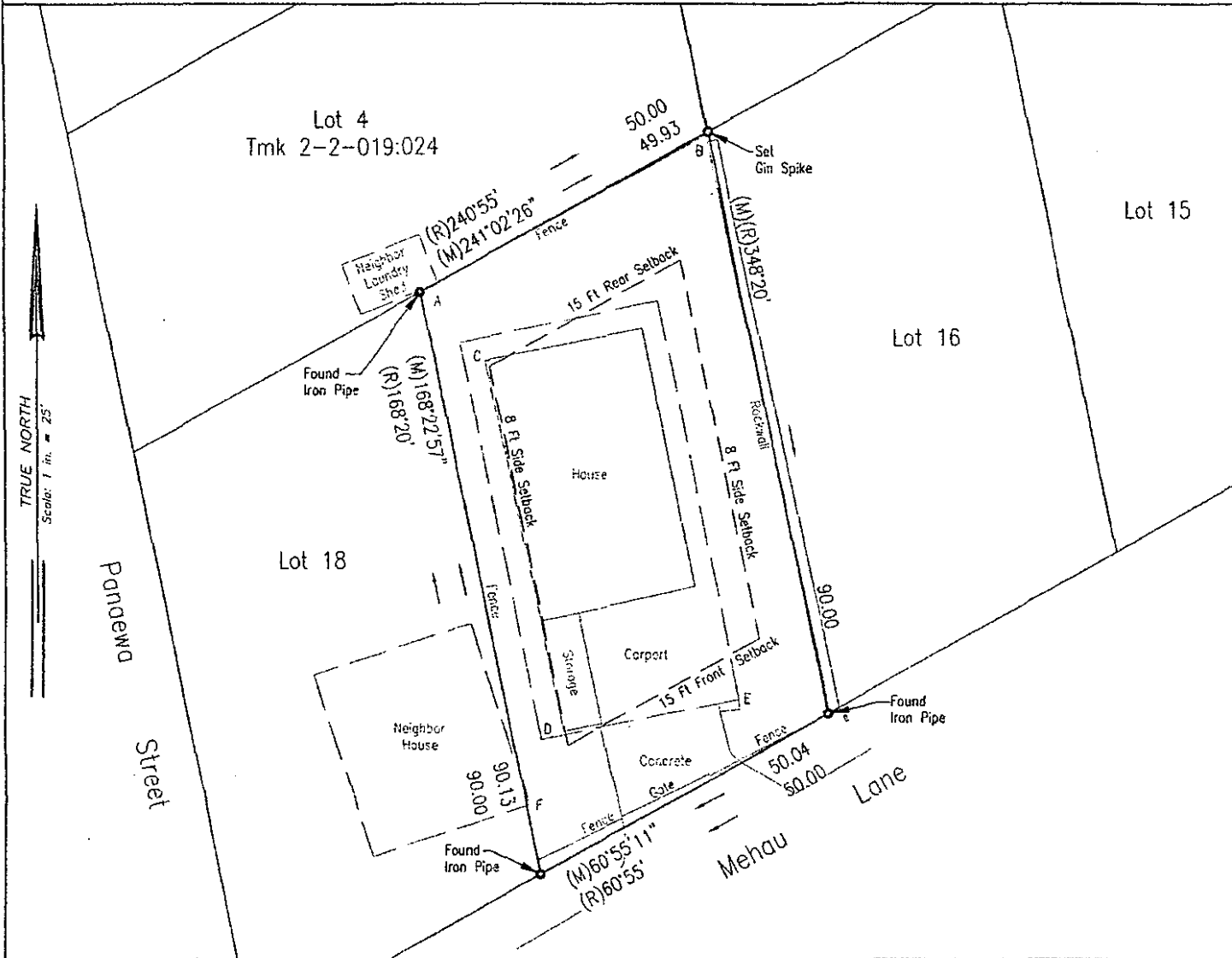
FROM: Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: Application: Variance -- VAR 14-000220
Applicant: LILLIAN Y. MATAYOSHI/CG HAWAII REALTY, CORP.
Owner: MITSUE HAYASHIDA REVOLCABLE LIVING LIVING TRUST
Request: Variance from Chapter 25, Zoning, Article 5 Division 2
Section 25-5-26 Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the Front
(South) Yard Setback).
Tax Map Key: 2-2-019:023; Lot 17

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

By: 092195

WAIALOA HEIGHTS LOTS
 WAIAKEA, HILO, ISLAND OF HAWAII, HAWAII
 TMK: (3rd) 2-2-019: 023



Notes

Scale: 1" = 25 feet

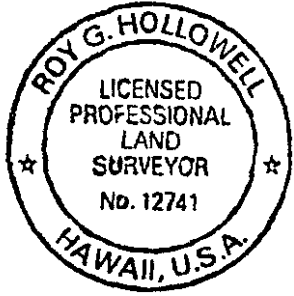
1. Corner markers shown as found were accepted. The corner marker shown as set was established at record positions based upon found corner markers. The measured dimensions (M) are within acceptable tolerances to record dimensions (R) for this type of land and subdivision.
2. Building setback lines per County of Hawaii Planning Department.
3. Improvement Notes:
 A Neighbor laundry room eave 0.2 feet over property line (PL).
 B. Rockwall 0.4 feet over PL.
 C. Northwest corner house 0.4 feet and roof eave 3.7 feet into side setback.
 D. Southwest carport corner 0.2 feet and eave 3.7 feet into side setback.

- E. Carport 6.6 feet into front setback.
- F. Neighbor roof eave 0.4 over PL.
4. Survey performed at the request of Howard Meguro.

This survey was performed by me or under my direct supervision on April 22, 2014.

Roy G. Hollowell

Roy G. Hollowell
 Licensed Professional Land Surveyor
 Certificate Number 12741
 Expires: April 30, 2016



Island Boundary
 RR 3, Box 81571, Pahoa, HI 96778
 (808) 345-1561
 Evan Wallman - Owner