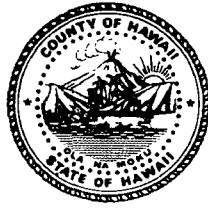


William P. Kenoi  
Mayor



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 23, 2015

Ms. Lillian Matayoshi  
CG Hawaii Realty Corporation  
688 Kino'ole Street  
Hilo, Hawai'i 96720

Dear Ms. Matayoshi:

**SUBJECT: Application: Variance – VAR-15-000314**  
**Applicant: LILLIAN Y. MATAYOSHI/CG HAWAII REALTY CORP.**  
**Owner: GAYLA COLOMA AND CLAIRE K. KAU**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Front (North) Yard Setback and Open Space Requirement)**  
**Tax Map Key: 2-2-039:048; Portion of Lot 11**

The Planning Director certifies the **approval** of Variance 15-000314, subject to conditions. The variance will allow for the open carport to remain on subject property with a minimum 4.86-foot front (north) yard setback and front yard open space, in lieu of the required 15-foot front (north) yard setback and in lieu of the required 10-foot front (north) yard open space requirement. 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 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 8,364 square feet and is situated at Waiākea Homestead House Lots, Waiākea, South Hilo, Hawai'i. The subject property's street address is 50E Ohea Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet front and rear; 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 8, 2015. The variance application's survey plan was prepared by Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors) denotes that the open carport built into the front (north) yard setback.  

The plot plan shows that the open carport encroaches 10.14 feet into the 15-foot front (north) yard setback and 5.14 feet into the 10-foot front (north) yard open space.

The encroachment leaves a minimum 4.86-foot front (north) yard setback, in lieu of the required 15-foot front (north) yard setback and 10-foot front (north) yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#21738) was issued on May 15, 1969 for a single-family dwelling consisting of 2 bedroom, 1 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated November 2, 2015. (Refer to attached DOH memorandum)
  - b. No comments received from the Department of Public Works Building Division.
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 October 15, 2015 and October 26, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 27, 2015.
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 open carport into the 15-foot front (north) yard setback and into the 10-foot front (north) yard open space as required by the Zoning Code.

The plot plan shows that open carport encroaches 10.14 feet into the 15-foot front (north) yard setback and 5.14 feet into the 10-foot front (north) yard open space requirement.

The encroachment leaves a minimum 4.86-foot front (north) yard setback and open space in lieu of the required 15-foot front (north) yard setback and 10-foot front (north) yard open space requirement.

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 1969 nearly 46 years ago, and subsequent construction permits were issued by the County for the existing open carport and closed under valid building permits. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and 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 single-family dwelling denoted on the survey map to fit within the correct building envelope 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 open carport was in compliance with all County requirements. Any structural or design correction of the open carport to meet setback requirement would leave unattractive reconstruction scars and diminish the overall functionality of the carport.

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.

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 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.

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 single-family dwelling has been in existence for approximately 46 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. 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.

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 single-family dwelling built on the subject property ("Portion of Lot 11) will not meet the minimum rear 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. Should the open carport built 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.
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. 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-15-000281.

Sincerely,



DUANE KANUHA  
Planning Director

LHN/SG:nci

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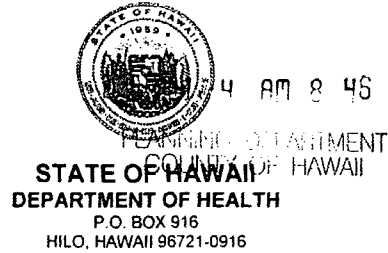
Ms. Lillian Matayoshi  
CG Hawaii Realty Corp.  
Page 6  
November 23, 2015

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

Ms. Lillian Matayoshi  
CG Hawaii Realty Corp.  
Page 7  
November 23, 2015

DAVID Y. IGE  
GOVERNOR OF HAWAII

VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH



MEMORANDUM

DATE: November 2, 2015

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

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

SUBJECT: Application: Variance VAR-15-000314  
Applicant: LILLIAN Y. MATAYOSHI (CG HAWAII REALTY CORP)  
Owner: GAYLA COLOMA AND CLAIRE K. KAU  
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,  
Section 25-5-7, Minimum Yards, and Section 25-4-44,  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into Front (North) Yard  
Setbacks)

TMK: 2-2-039:048

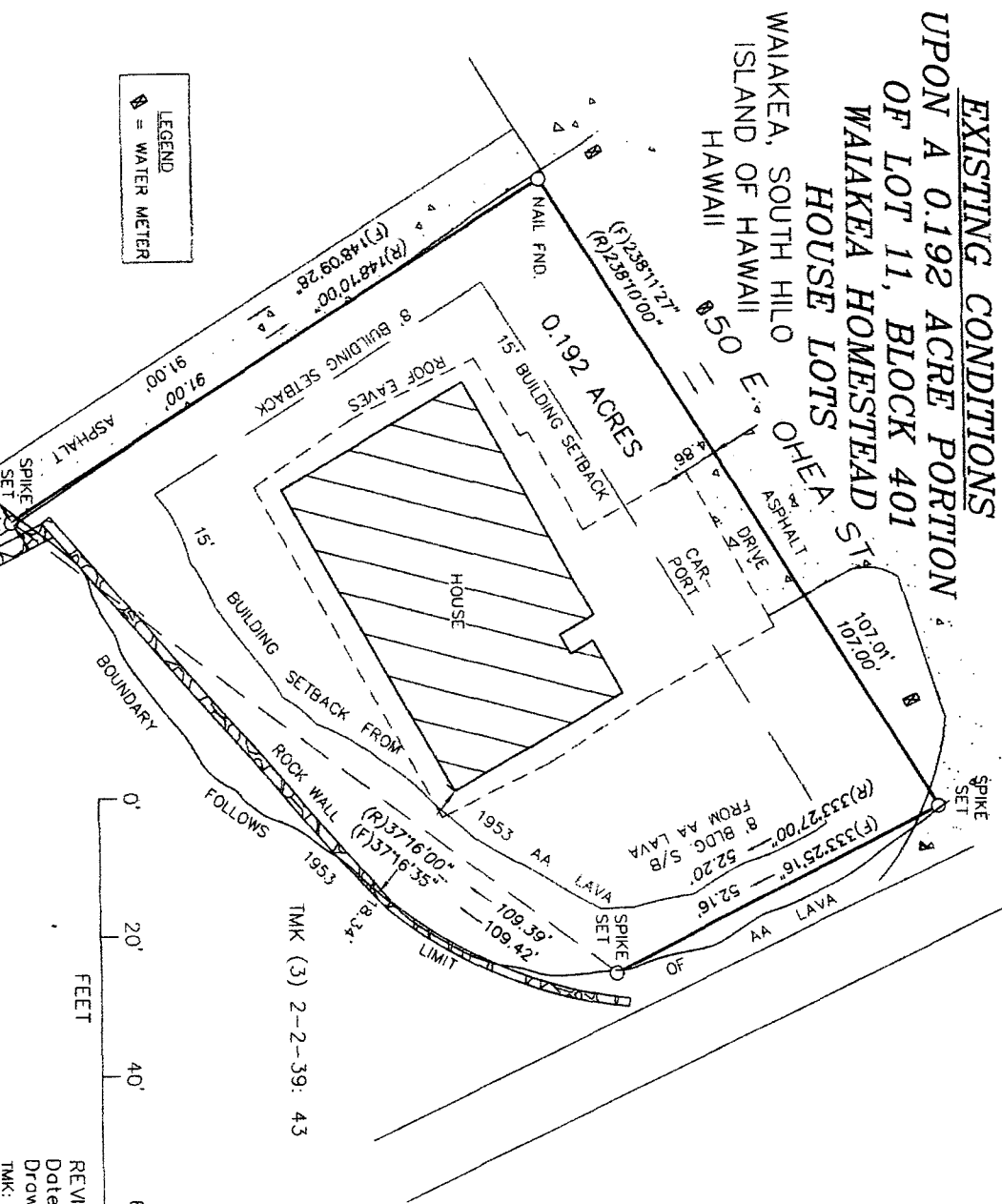
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The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD: VAR-15-000314.eh

101805

**EXISTING CONDITIONS**  
**UPON A 0.192 ACRE PORTION**  
**OF LOT 11, BLOCK 401**  
**WAIAKEA HOMESTEAD**  
**HOUSE LOTS**  
**WAIAKEA, SOUTH HILLO**  
**ISLAND OF HAWAII**  
**HAWAII**



**LEGEND**  
 B = WATER METER



19°42.003'N, 155°04.154'W COUNTY GIS

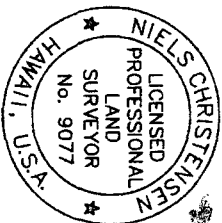
TMK (3) 2-2-39: 43

REVISED  
 Date: October 12, 2015  
 Drawing: JOB111020.dwg  
 TMK: (3) 2-2-39: 48

TRUE NORTH  
 SCALE: 1 IN. = 20 Ft.

**NOTES:**

1. The features shown hereon were located by an actual field survey completed on September 25, 2015.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (K-2).
3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
4. The attached Report pertains to improvements near property lines and County building setbacks.



*Niels Christensen*

Niels Christensen  
 Licensed Professional Land Surveyor  
 License Number 9077

This work was prepared by me or under my direct supervision

**The Independent Hawaii Surveyors, LLC**

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 Hilo, HI 96721  
 Phone 808 959-0360  
 FAX 808 959-0353  
 info@hawaiiindependent.com