

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i PLANNING DEPARTMENT

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December 14, 2015

Pat Halpern
Clark Realty Corp.
99-Aupuni Street, Suite 118
Hilo, Hawaii 96720

Dear Ms. Halpern:

SUBJECT: Application: Variance - VAR 15-000318
Applicant: PAT HALPERN/CLARK REALTY CORP.
Owner: GORDON R. MORSE, JR.
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards (Encroachment into Side Southwest) Yard Setback)
Tax Map Key: 1-9-003:022; Lot 6

The Planning Director certifies the **approval** of VAR-15-000318 subject to variance conditions. The variance will allow the single-family dwelling to remain on Lot 6, with 18.5-foot southwest side yard setback, in lieu of the required 20-foot side yard setback. This exception is in lieu of the required minimum 20-foot side yard setback. This variance is from the subject property's minimum (southwest) side yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.10 acres and is situated in the Ola'a Summer Lots, Ola'a, Puna, Hawai'i. The subject property's street address is 19-3882 Old Volcano Road.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 19, 2015. The variance site plan is drawn to scale, prepared by the applicant and denotes the position of the single-family dwelling constructed into the minimum 20-foot side yard setback. The request affects the southwest side yard setback.

The site plan shows that the single-family dwelling encroaches 1.5 feet into the southwest side yard setback.

The encroachment leaves a minimum 18.5-foot side (southwest) yard setback in lieu of the required 20-foot side (southwest) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#030389) was issued on March 4, 2003 to the subject property for a single-family dwelling consisting of 2 bedrooms, 1.5 baths, living room, kitchen and dining area.

7. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum dated November 6, 2015. (See attached.)
- b. No comments were received from the Department of Public Works – Building.

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 November 9, 2015 and October 23, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 25, 2015.

9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 single-family dwelling into the 20-foot northwest side yard setback.

The site plan prepared by the applicant shows a section of the single-family dwelling encroaching 1.5 feet into the 20-foot side (southwest) yard setback.

The encroachment leaves a minimum 18.5-foot side (southwest) yard setback in lieu of the required 20-foot side (southwest) 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 2008, nearly 7 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.

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.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the water tank encroachments constructed into the affected side yard setback 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 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.

Another alternative is to consolidate the subject property with the adjoining rear and side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

(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 criteria (c) for the following reasons:

The intent and purpose of requiring structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/ uses and boundary/property lines.

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 this office did not receive any complaints from surrounding property owners during the existence of the agricultural shed and open carport.

In addition, objections were not received from 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 foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

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 6") will not meet the minimum side 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 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.

Pat Halpern
Clark Realty Corp.
Page 5
December 14, 2015

3. 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 (footprint) 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. 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-15-000318 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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



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PLANNING DEPARTMENT
COUNTY OF HAWAII

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

MEMORANDUM

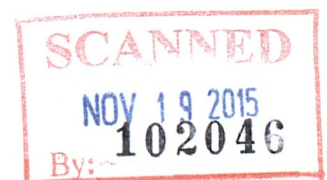
DATE: November 6, 2015

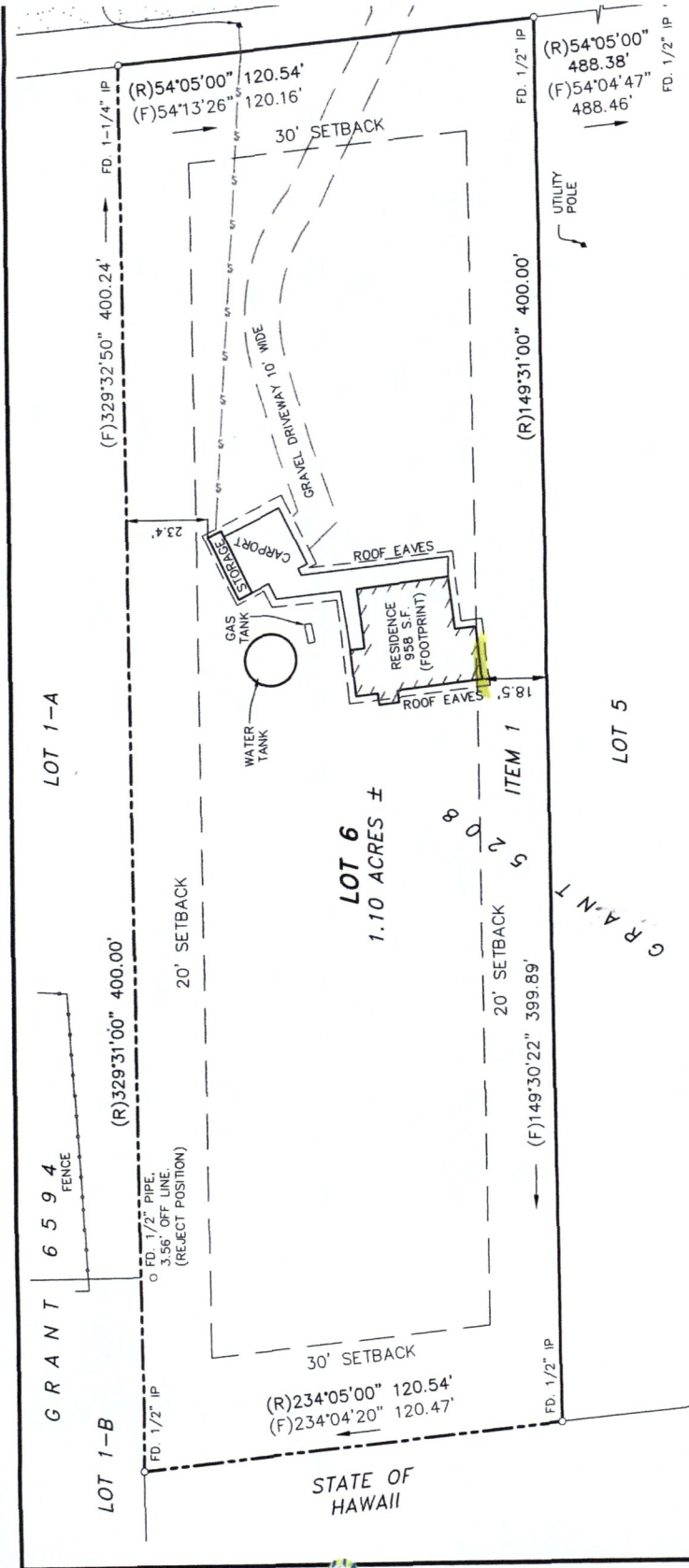
TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

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

SUBJECT: **Application: Variance – VAR-15-000318**
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Request: Variance from Chapter 25, Zoning, Article 5
Division 7, Section 25-5-76 Minimum Yards Requirements
(Encroachment into the Southwest Side Yard Setback).
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The Health Department found no environmental health concerns with regulatory implications in the submittals.





This work
under

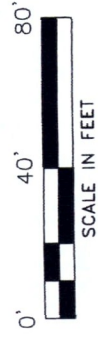
Boundary and Improvement Survey

Of Lot 6,

Portion of Grant 5208 to F.S. Lyman,
Block D, Oiaa Summer Lots
Oiaa, Island and County of Hawaii.

TMK(3) 1-9-003: 022

dll
LAND &
P.O.Bo: P



- NOTES:**
1. This K-2 field survey completed September 23, 2015.
 2. (F) indicates field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.12 ft. (n=12)
 3. (R) indicates Record dimensions per:
Subdivision of Portion of Grant 5208, approved Mar. 1983 by HCPD as SUB# 4923.
Resubdivision of Grant 6594 and Grant 6595, approved Jul. 1990 by HCPD as SUB# 5926
 4. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM...' and described in the attached report.
 5. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.

September 24, 2015
TG# 1506 3690