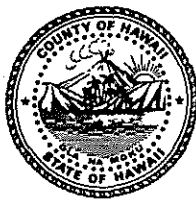


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

August 25, 1995

Gerald P. and Deborah J. Hay  
P. O. Box 761  
Keaau, HI 96749

Dear Mr. and Mrs. Hay:

Variance Application No. 682 (VAR 95-48)  
Applicant: Gerald P. and Deborah J. Hay  
Request: Variance from Minimum Side Yard Setback  
Requirements of the Zoning Code  
Tax Map Key: 1-5-44:206, Lot 28

After reviewing the complete application, the Planning Director's action is to grant the variance request for the existing doughboy swimming pool/reservoir with a side yard setback of 16 and 12 feet in lieu of the minimum 20 foot side yard setback required by the Zoning Code Section 25-156.

The Planning Director's approval of the variance request is based on the following findings.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Location Description. The subject property, consisting of one (1) acre, is located along the mauka side of 20th street, approximately 0.7 mile west (Keaau Side) of the 20th Street-Kaloli Drive Intersection, Hawaiian Paradise park, Puna, Hawaii. The County zoning designation is Agricultural-one acre (A-1a) and the State Land Use designation is "Agriculture".
2. Property Improvements of Record. According to the applicant and Department of Public Works-Building Division records the existing single family dwelling and related improvements were constructed over the course of 15 years by the applicants of this variance request. In 1981, Building Permit No. 812663 was issued for construction of the initial single family dwelling. Building Permit No's 840569 (1984), 840736 (1984), 860505 (1986) and 951120 (1995) were issued for additions, detached related accessory structures including the structure which is the subject of this variance petition.

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3. Setback Requirements. The site plan submitted by the applicant indicates the existing doughboy swimming pool/reservoir has a side yard setback of 16 and 12 feet. The required side yard setback is 20 feet. According to the applicant the "pool" was intended to serve both recreational and irrigation reservoir purposes so various options were explored. It was more economical to erect an above-ground pool in the low spot than to install an in-ground pool or reservoir, or level another area elsewhere on the lot for the structure. The low area was enlarged toward the house by what was believed to be an adequate distance to accommodate the above-ground pool outside the required 20-foot setback. When the pool was installed, however, it was not possible to place it back as far into the area as had been planned. The result is that the pool sits at a slight angle on the lot, 16 feet from the side property line on one end and 12 feet on the other end.

Therefore, in considering the foregoing facts, there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights which would otherwise be available or to a degree which obviously interferes with the best use or manner or development of the subject property.

The variance request is approved, subject to the following.

INTENT AND PURPOSE

1. Adequate Light and Air Circulation, Open Space. The intent and purpose of requiring building setbacks within a subdivision is to have adequate air and light circulation between structures and property lines.
2. Minimal Cumulative Effect. Despite the encroachment no complaints have been made to the Planning Department of the setback violation on the subject property. The physical and visual encroachment is minor considering the one (1) acre lot size. The apparent negligible effect of the encroachment does not affect the requirements for adequate light, air and open space between the existing structure and the adjoining lots.

Although the Zoning Code requires a minimum side yard setback for the existing structure, in this case granting a setback variance is for an encroachment that does not appear to have a visual, physical or adverse impact to the adjacent properties.

The rest of the existing structures comply with the minimum yard setback requirements of the Zoning Code. No written objections were submitted from any of the participating government agencies.

Based on the foregoing findings, granting the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Codes and the County General Plan; it 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 variance request is approved, subject to the following conditions.

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Recordation of variance approval; payment of filing fees requirements. The variance approval with conditions shall be recorded as a part of the deed document for the subject property. The applicant/landowner is to pay for all recordation costs and fees; and, submit or prepare all information or documents needed by the Planning Department to record the variance approval in the deed document, the Planning Department will submit the variance approval and conditions for recordation with the Registrar-State Bureau of Conveyances.
3. Obtain a building permit for the existing swimming pool/reservoir from the Department of Public Works, Building Division.
4. Comply with all other applicable State and County rules and regulations.


Should any of the foregoing conditions not be complied with the Planning Director can proceed to declare the variance permit null and void. For any questions on this matter, please contact Ed Cheplic of the Planning Department at 961-8288.

Review of Director's Action; Interested Party. Zoning Code Section 25-27(a)(3), provides that an "interested party" may request Planning Commission review of the Director's action.

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The request must be made within ten (10) working days after notice of the Director's decision, in writing. Consequently, the variance becomes effective after the ten day appeal period has passed; and an interested party does not request a review of the Director's action. Should a request be made we will inform you of the procedures that must be complied with.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EC:mjs