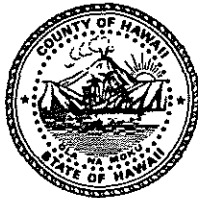


Stephen K. Yamashiro  
Mayor



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

CERTIFIED MAIL

P 364 320 417

June 3, 1996

Mr. Bill A. Maclean  
P. O. Box 1824  
Kamuela, HI 96743

Dear Mr. Maclean:

Variance Permit No. 746  
Applicant: Bill A. Maclean  
Variance From the Minimum Side Yard Requirements  
of Chapter 25, Zoning  
Tax Map Key: 1-5-044:154, Lot 146

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to recognize the location of existing building and site improvements and allow a portion of an existing dwelling and water tank "AS BUILT" to remain within the required minimum side yards of the subject property in lieu of the minimum twenty (20) foot side yard, Article 8 (Agricultural Districts), Section 25-156 (a) (2) (Minimum yards) and Section 25-66 (Projections into require yards and open spaces).

The subject property is Lot 146, Block "7", Land Court Application 1053, Map 58 and is situated at Keaau, Puna, Island and County of Hawaii and is within the Hawaiian Paradise Park Subdivision. The property and existing building improvements there on is commonly identified by the tax map key parcel number, TMK: 1-5-044:154, Lot 146.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum side yard and open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject 1.00 acre parcel is within the existing Hawaiian Paradise Park Subdivision. The parcel was zoned Agricultural (A-1a) by the County in 1967. The property is designated Agricultural "A" by the State Land Use Commission (LUC).
2. The existing two (2) story single family dwelling, water tank, and related building improvements were issued Building Permit No. 901481 by the Department of Public Works (DPW), Building Division on July 16, 1990.
3. A recent survey map dated April 30, 1996, prepared and certified by Murray, Smith and Associates, Inc., shows and disclosed the building encroachments within the parcel's side yard. The location of the existing dwelling and water tank within the side yard exhibit the following or range of dimensions of 8.0 feet +/-, to 9.4 feet between the existing building improvements and the affected lots side property line. The affected living area on each floor of the existing two (2) story dwelling appears to be approximately one hundred twenty-four (124) square feet or approximately two hundred forty-eight (248) square feet. Approximately eighty (80) % of the water tank which appears to have an eighteen (18) foot diameter is also situated within the side yard. For the record, the existing cesspool location was not identified or disclosed on the map dated April 30, 1996.
4. On July 16, 1990, Building Permit No. 901481 was issued to the legal owner or permittee, "Bill Maclean", by the Department of Public Works (DPW), Building Division, to construct a new two (2) story efficiency dwelling, water tank, and other related site improvements. Subsequent to the issuance of the building permit, the electrical permit and plumbing permit were obtained from the Department of Public Works, Building Division. The building permit was closed by the DPW, Building Division on April 11, 1996.

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5. The zoning code requires a site plan, drawn to scale, including appropriate map graphics and dimensions, to identify the existing site and proposed new building improvements. It appears a site plan and building construction plans submitted with the building permit application were reviewed and approved by the Planning Department on June 1, 1990. However, a copy of the building permit's approved site plan was not submitted with the subject variance application.
6. The applicants contend they were unaware the dwelling and the water tank was being built into the affected side yard and assumed the minimum building side yards are monitored and checked by County officials. No evidence has been found to show indifference or premeditation by the previous owners or permittee to recklessly ignore the minimum yard requirements and the Zoning Code.

The applicant(s) recently discovered and identified the existing building encroachments within the affected side yard and are asking for relief from the minimum side yard requirements of the Zoning Code to recognize and resolve the building encroachments. The applicants became aware of the building encroachments during and after a modern survey by a Registered Land Surveyor was performed and a map or site plan, drawn to scale identifying and showing the property boundaries, "AS BUILT" was completed and examined.

Therefore, considering the foregoing facts, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner or applicant(s) 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 subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicant include: removing the building encroachments together with the

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affected roof eave resulting a smaller living space; acquiring additional property from the adjacent property, Lot 147 (TMK: 1-5-44:153); demolish, design, and reconstruct or construct a new dwelling and relocated the water tank within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. The re-siting, redesign of the two (2) story efficiency dwelling would be economically unreasonable and possibly disrupt the dwelling's building integrity, and disrupt the location and function of the required and existing waste water system.

The applicant(s) on their own volition are honestly trying to resolve the encroachment problem not intentionally created by them. No evidence has been found to show indifference or premeditation by the previous owners or permittee to deliberately or intentionally allow the building encroachments to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owners/applicants recited above. However, these alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owners when a more reasonable alternative is available by the granting of the subject variance request (VAR 96-32).

#### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling and water tank were constructed with a building permit issued to the current owners or permittee. There is no County water system in the subdivision and all dwellings will require an individual water catchment (IWC) system or a "water tank". The existing dwelling and separate water storage tank were built under a valid building permit and it appears the current owners or permittee believed the minimum required building setback requirements. Building inspections during the course of building construction and life of the building permit did not disclose any setback irregularities and the current owners felt all building permit requirements and procedures during the construction of the dwelling and related site improvements were being met and were satisfied. The building permit was closed by the county on April 11, 1996.

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The building encroachments have been built within the property's side yard. The encroachment of the two (2) dwelling and the water tank into the affected side yard is not physically and visually obtrusive. The existing water tank is approximately eight (8) feet from the affected side property line. There is no County water system in this area of the Hawaiian Paradise Park Subdivision. As such, the existing dwelling and water tank fit into the agricultural "feeling" and "residential" character of the surrounding neighborhood and surrounding land pattern and uses. The portion of the two (2) story dwelling and water tank encroachment into the side yards will not visually, physically or adversely affect the rights of the property owners of parcel 153, Lot 147. In addition, the water tank is not part of the existing dwelling or classified as a habitable structure and is a necessary or integral part of a majority of the dwellings built within the subdivision. Therefore, it is felt the location of the existing dwelling and water tank will not affect the adjacent vacant parcel, Lot 147, other adjacent property and detract from the character of the immediate neighborhood within the subdivision. The existing building encroachments were induced by a error and misunderstanding or misinterpretation of the minimum building "setback" requirements by the owners or permittee. The remaining portion of the existing two (2) story dwelling and water tank complies with the minimum yards of the Zoning Code.

The subject variance application was deemed complete by the Planning Department on April 25, 1996.

To date, no objections were received from any of the participating government agencies or surrounding property owners.

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

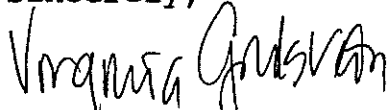
1. The applicant(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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2. The applicants/owners have identified and acknowledge the subject building encroachments and use were built within the affected minimum side yards prescribed by the Chapter 25, Zoning. The applicants/owners, 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. The approval of this variance is only from the Zoning Code minimum side yard requirements.
4. Future building improvement shall be subject to State and County regulations pertaining to occupancy and building.

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

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

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