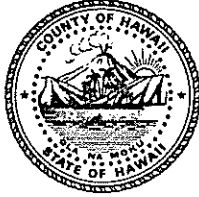


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubur  
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 364 305 215

September 24, 1997

Mr. Ronald A. Wilson  
162 Kinoole Street, Suite 201  
Hilo, HI 96720

Dear Mr. Wilson:

Variance Permit No. 859 (VAR 97-45)  
Applicant: RONALD WILSON, JR.  
Owner: GORDON IGNACIO, JR.  
Request: Variance From the Minimum Yards and Permitted Projections  
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning, December 7, 1996  
Tax Map Key: 1-5-038:055, Lot 336

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 859 allows the existing water tank situated on the subject property to have one side yard being minimum nine (9.0) feet in lieu of the minimum twenty (20) foot front yard required for the subject property zoned Agricultural (A-1a), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and clear space of nine (9.0) feet in lieu of a minimum fourteen (14) feet side yard open space requirement pursuant to Section 25-4-44 (a) (1), Permitted Projections Into Yards and Open Spaces.

#### FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel or lot, LOT 336, containing 1.00 acres is zoned Agricultural (A-1a) by the County. The property is designated Agriculture "A" by the State Land Use Commission (LUC).
2. The existing dwelling, water tank, and other related site improvements were constructed under a building permit (B No. 902707) issued by the Department of Public Works (DPW), Building Division in Hilo. B No. 902707 was opened on December 7, 1990, by the DPW.
3. The site plan or map, drawn to scale and dated April 22, 1997, and prepared by Niels Christensen, LPLS. The map submitted with the variance application, identifies existing boundary conditions on and within Lot 336 and accurately identifies the minimum building setback lines and location of the existing water tank encroachment within one of the two side yards. The map or plot plan drawing identifies the boundary lines and location of the existing dwelling, water tank, and cesspool on the lot and denotes the distance, in feet, between the dwelling and water tank to two of the respective boundary lines. The wall or face of the water tank is situated within one of the side yards and is only 9.15 feet from the one of the two side property lines. The map submitted by the applicant does not identify the driveway access from the existing privately owned right-of-way or show and identify the driveway to the carport situated adjacent dwelling on the subject property.
4. To date only (1) building permit (B No. 902707) was issued to construct and establish the existing dwelling and related building improvements situated on the subject parcel. Subsequent to the issuance of the building permits, it appears the electrical permits and plumbing permits were also obtained from the DPW, Building Division. The required building inspections by the effected government agencies of the new dwelling and related site improvements occurred during the life of both building permits. To date, B No. 902707 is still active and has not been completed or closed by the DPW, Building Division.
5. It appears the original site and building construction plans submitted with the approved building permit was reviewed and approved by the Planning Department and other affected government agencies.

6. Pursuant to a discussion with the Deputy Director, Planning Department and note dated July 15, 1997, only the second notice of the subject variance application to the surrounding was sent to the property owners within 500 feet of the subject property.
7. The Department of Finance-Real Property Tax memorandum dated July 14, 1997 in variance file states in part:  
  
"Real Property taxes are paid through June 30, 1997."
8. The applicant made statements in a submittal "APPLICATION FOR VARIANCE FROM ZONING CODE", (A), (B), (C), (D), and (E), that was submitted with the variance application:  
  
(Please refer to applicant's reasons and statements in subject variance file.)
9. No objections to the variance application were received from other government agencies or the surrounding property owners.

The owner(s)/applicant(s) recently discovered and identified the existing building or water tank encroachment within one of the side yards. The current owner or applicant became aware of the water tank building encroachment during a pending real estate transaction occurred. Subsequently, a detailed and accurate boundary or site plan was ordered by the applicant/owner and prepared by a Licensed Professional Land Surveyor to identify the building encroachment problem.

Therefore, considering the applicant's circumstances and 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(s)/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 owner(s)/applicant(s). Alternatives available to the applicant include the following: Removing the tank encroachments or portion of the existing tank; Relocating the existing water tank or constructing a new water tank within the correct building envelope prescribed by the Zoning Code, and other similar building design alternatives, etc. The removal of a portion of the existing water tank

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encroachment or the re-sitting, redesign, and remodeling, etc. of the existing water tank would be economically unreasonable and possibly disrupt the water tank's building integrity and disrupt other existing site improvements.

The current owner or applicant, on his own volition, is honestly trying to resolve a seven (7) year old building encroachment problem. No evidence has been found to show indifference or premeditation by the previous owner(s) or builder in December 1990 to deliberately ignore the existing property boundary lines and minimum building yards or intentionally allow any 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 design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owner or applicant when a more reasonable alternative is available by the granting of the subject variance request.

#### INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The existing dwelling and related building improvements were constructed under a valid building permit issued to the applicant/owner. Building inspections of the construction of the existing building improvements throughout the life of the current building permit did not disclose any water tank setback irregularities. The applicant and previous builder felt all Zoning Code, building permit requirements and government procedures were observed and that all County building permit requirements were satisfied or met.

The building or water tank has been built within one of the property's side yards. The existing building encroachments into the respective side yard are not physically, visually obtrusive from the existing private and public rights-of-way. The existing dwelling's design and related site improvements are similar to other existing dwellings built near the property or within the subdivision.

The water tank encroachment does not depreciate or detract from the character of the surrounding neighborhood, existing residences, public uses, and the existing and surrounding agricultural and urban land patterns. Therefore, it is felt the present location and existing water tank encroachment will not detract from the character of the immediate neighborhood or the subdivision. It appears only the existing water tank building encroachment into the affected side yard was perpetuated or induced by accumulation of staking and construction

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errors. The existing "dwelling" identified on the applicant's site plan complies with the minimum yards of the Zoning Code, dated December 7, 1996.

The subject variance application was deemed complete on June 12, 1997. Pursuant to a September 23, 1997, discussion with the applicant, an extension of time until October 3, 1997, to render a decision on the subject variance application was mutually agreed upon.

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.
2. The applicant/owner has identified and acknowledged a portion of the existing water tank constructed on the subject property or lot encroaches into one of the side yards and open space setback requirements. It appears the portion of the existing water tank built on the subject tax map key property under B No. 902707 does not comply with the minimum side yard and permitted projection requirements prescribed by the Chapter 25, Zoning dated December 7, 1996. The applicant/owner, 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 applicant/owner, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance permit.
3. The approval of this variance is only for the portion of the water tank within one side yard and which does not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yards and open space requirements. The owner(s), applicant, or authorized representative shall contact the DPW, Building Division to address and close the existing and active building permit (B No. 902707).
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,

A handwritten signature in cursive script that reads "Russell Kolub". The signature is written in black ink and ends with a long horizontal flourish.

for VIRGINIA GOLDSTEIN  
Planning Director

WRY:cjf  
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xc: Real Property Tax Office