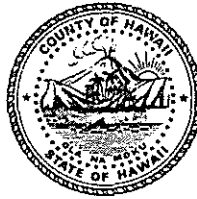


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**  
**Z 179 517 494**

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

March 6, 1998

Mr. Sidney A. Whittenton  
c/o Ms. Denise S. Nakanishi, RA  
CENTURY 21 BIG ISLAND  
586 Kanoelehua Avenue  
Hilo, HI 96720

Dear Mr. Whittenton:

Variance Permit No. 900 (VAR 97-86)  
Applicant: SIDNEY A WHITTENTON  
Owner: GEORGE TEBO, ET AL.  
Request: Variance From the Minimum Yards and Permitted Projections Into  
Yard and Open Spaces, Pursuant to Chapter 25, Hawaii County Zoning Code  
Tax Map Key: 1-5-041:199

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow the water tank attached to the existing dwelling to remain within the minimum 20 feet side yard of the subject property. The water tank is allowed to remain on the subject property with a 16.5 feet side yard in lieu of the minimum 20 feet side yard required by Article 5, Division 7, Section 25-5-76, (a) Minimum yards.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is located in the Hawaiian Paradise Park Subdivision (15-1803 19th. Avenue) and is also identified as Lot 219, a Portion of BLOCK "7", Land Court Application 1053, Map 58, Keaau, Puna,

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c/o Ms. Denise S. Nakanishi, RA  
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Hawaii. The property contains 1.00 acre or 43,560 square feet and is zoned Agricultural (A-1a) by the County. The property is designated Agriculture "A" by the State Land Use Commission (LUC).

2. The original dwelling and related site improvements were constructed in 1992 under building permit B No. 920940 issued by the Department of Public Works (DPW), Building Division in Hilo. Permit B No. 920940 was opened on May 11, 1992 and is still an active building permit. Pursuant to DPW building records, the building permit was originally issued to Mr. and Mrs. George Damon, II.
3. The site plan drawing, drawn to scale, identifies the location of the water tank, the 20 foot side yard "setback line" within the subject property and the "16.5'" distance between the water tank and the affected side yard property line. As such, the water tank encroaches 3.5 feet into the required 20 feet side yard.
4. The Department of Finance-Real Property Tax memorandum dated November 11, 1997, states:  
  
"Real Property taxes are paid through June 30, 1998."
5. No objections to the variance application were received from the surrounding property owners.

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner 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

1. The applicant and owners are addressing a building problem not created by them and are honestly trying to resolve this long standing problem. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachment to occur.

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2. Any architectural alterations or design changes to the existing water catchment system and water tank would create undue and excessive hardships for the current owners when more reasonable options are available.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands being placed on the applicant and owner when a more reasonable alternative is available by granting this variance application.

#### 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 water tank on the subject property encroaches 3.5 feet into the minimum 20 feet side yard requirement. This building encroachment will not diminish the ability of adequate light and air to circulate and will still provide adequate open space. The water tank was originally designed as a "accessory building" and was not attached to the dwelling permitted in 1992. The 1992 Zoning Code and building permit required the permitted water tank to be situated at least ten (10) feet from the dwelling prior to the adoption of the present Zoning Code dated December 7, 1996. However, subsequent to issuance of the building permit in 1992, it appears the existing water tank location was not questioned by building inspectors, other county officials, and the public. It appears the present tank location has not affected the rights of the adjacent property owner or adversely affected the surrounding property owners within the immediate neighborhood or the Hawaiian Paradise Park Subdivision. There were no objections from any surrounding property owners to the proposed variance request. Therefore, it is felt the retention of the existing "metal" water tank on the existing property will not detract from the character of the immediate neighborhood or the Hawaiian Paradise Park Subdivision.

The subject variance application was deemed complete on October 29, 1997.

Based on the foregoing findings, this variance request 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 variance request is approved subject to the following conditions:

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

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2. The approval of this variance is for the water tank only. The current owner(s), their successors or assigns shall contact the DWS, Building Division and address and close B No. 920940.
3. The owners, their 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 pertaining to the construction of the water tank.
4. The approval of this variance shall be included in the conveyance document for the subject property and copy of the recorded document shall be submitted to the Planning Department within a year from the effective date of approval of this variance, March 6, 1998.
5. The approval of this variance is only for the existing building improvements established within the minimum side yard shown on site plan submitted with the variance application. Any future building additions shall comply with all requirements of the Zoning Code and Building Code.
6. Future building improvements and permitted uses on the subject property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,

  
for VIRGINIA GOLDSTEIN  
Planning Director

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xc: Real Property Tax Office