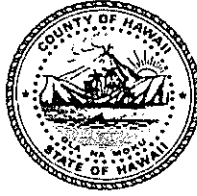


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

#### CERTIFIED MAIL

Z 095 324 220

November 20, 1998

Mr. Richard S. Mann  
3835 1/2 Corliss Ave. N.  
Seattle, WA 98103

Dear Mr. Mann:

Variance Permit No.969 (VAR 98-67)

Applicant: RICHARD S. MANN

Owners: RICHARD S. MANN, ET AL.

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: 1-9-016:009, Lot 11

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.969 allows the dwelling's existing water tank to be situated on the subject property with front yards of 9.18 feet and 19.05 feet in lieu of the minimum 20 feet from the respective front yards as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

#### FINDINGS AND RECOMMENDATION

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

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 15,620 square feet is Lot 11, Kilauea Settlement Lots. Olaa, Puna, Hawaii.

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2. The existing dwelling, water tank, and related site improvements were constructed under a series of building permits (B No. 870579, B No. 901547, and B No.981194) issued by the Department of Public Works (DPW), Building Division in Hilo.
3. The site plan drawing, drawn to scale and dated August 11, 1998, by The Independent Hawaii Surveyors, identifies the existing structures on the subject property. The site plan accurately denotes the minimum building setbacks required for the subject property.
4. To date, it appears three (3) building permits were issued to construct and establish the existing dwelling, water tank, and related building improvements situated on the subject parcel. Subsequent to the issuance of the building permits the related electrical and plumbing permits were also obtained from the DPW, Building Division.
5. It appears the original site plans and building construction plans submitted with the approved building permits were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and other affected government agencies of all building improvements on the property.
6. The applicant's explanation dated September 18, 1998, states "the 10,000 gallon ferro-cement tank was built approximately 8 years ago by Pacific Gunite, that (sic) contractor was apprised of the twenty-foot setback and was shown the property line. The property owner was not on the island at the time to supervise the construction and by a miscalculation the tank was placed incorrectly. The misplacement was not apparent due to the heavy growth of trees between the tank and the dirt track road at the property line, and remained undiscovered until a survey was conducted August 13, 1998." The water tank building and attached shed encroachments built under B No. 981194 within the affected front yards and open space requirements went undetected by the County building inspectors, other government agencies, and the public.
7. The Department of Public Works memorandum dated October 9, 1998, in the variance file states in part:
  - "1. All building shall conform to all requirements of code and statutes pertaining to building construction.

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2. The temporary carport and shed shall be moved to comply with building setback requirements.
3. The roadway fronting the subject property are all private roads."
8. The Department of Finance-Real Property Tax memorandum dated October 7, 1998, in variance file states in part:  
  
"There is no agricultural activity on this 15,620 sq. ft. parcel (sic) No rollback tax consequences.  
  
Real Property taxes are paid through December 31, 1998."
9. The State Department of Health (DOH) memorandum dated October 12, 1998, in the variance file states in part:  
  
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
10. No objections to the variance application were received from the surrounding property owners.

The present owner/applicant submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the water tank from the two boundary lines. The existing water tank and shed was constructed within the property's front yards.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building improvements, 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/applicant. Alternatives available to the applicant include the following: Removing the existing building encroachments together with the affected roof eaves or relocate the water tank within the correct building envelope prescribed by the Zoning Code, and other similar design

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alternatives, etc. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing water tank would be economically unreasonable and may disrupt other existing site improvements.

The current owner or applicant, on his own volition, is honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the current owner or applicant to deliberately or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/applicant 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 water tank was constructed under valid building permit issued to the applicant/owners. Building inspections of the premises, during building construction and throughout the life of the original building permit did not disclose any water tank setback irregularities. The current owner or applicant felt all Zoning Code and building permit requirements had been observed, satisfied, and met.

The circumstances which permitted the water tank to be built on the non-conforming sized property are unique. The existing building encroachments have been built on the property's within the front yards of the property. The existing building encroachments are not physically and visually obtrusive from the existing road rights-of-way. The building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears, the existing water tank building's "footprint" and building encroachments built and established recently within the property's front yard have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the proposed water tank building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the property and within the property's front yards were created and induced by a cumulation of mapping discrepancies and interpretation of the minimum yards during building permit review. Inspection of the property during the life of the building permits by government agencies did not discover any building encroachment or disclose any irregular water tank building setback

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not discover any building encroachment or disclose any irregular water tank building setback problems. The existing water tank and attached shed will not be considered a "living area".

The subject variance application was deemed complete on September 18, 1998.

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. 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 applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is November 17, 1998.
2. The approval of this variance is only from the Zoning Code. 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 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 location of the existing water tank and attached shed on the subject property will not meet Chapter 25, the Zoning Code's, minimum front yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing water tank and attached shed identified on the plot or site plan dated August 11, 1998, to remain on the subject property. The "TEMP. CARPORT" adjacent the "RESIDENCE" identified on the plot or site plan dated August 11, 1998, shall be removed by the applicant or owners on or before June 30, 1999.
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,

  
for VIRGINIA GOLDSTEIN  
Planning Director

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xc: Real Property Tax Office