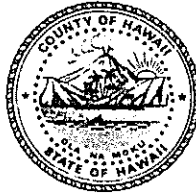


Stephen K. Yamashiro
Mayor



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

P 101 317 747

December 7, 1998

Ms. Jane E. Kahaloa
P. O. Box 2020
Keaau, HI 96749

Dear Ms. Kahaloa:

Variance Permit No. 976 (VAR 98-72)

Applicant: JANE E. KAHALOA

Owner: JANE E. KAHALOA

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: 1-6-085:071, Lot 19

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. 976 allows the dwelling's existing water tank to remain on the subject property with a side yard of 5.53 feet in lieu of the minimum 10 feet from the respective side yards as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-5-77, Other regulations, and Article 4, Division 4, 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:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 12,000 square feet is Lot 19, Block 37, Ainaloa Subdivision, Keaau, Puna, Hawaii. The property's address is 16-2053 Uilani Drive.
2. The existing dwelling, water tank, and related site improvements were constructed under a building permit (B No. 790432) issued to Martin and Judith Beeman by the Department of Public Works (DPW), Building Division in Hilo.
3. The site plan drawing, drawn to scale and dated September 25, 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 only one (1) building permit was issued to construct and establish the existing dwelling, water tank, and related building improvements situated on the subject parcel. It appears that 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 permit in 1979 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 or reasons dated October 20, 1998, states in part:
 - "1. My home is in escrow and the buyer's lender has requested the variance.
 2. The Independent Hawaii Surveyors (scale drawing attached) survey shows the need for variance.
 3. Attached is Robert Bright's 1993 survey which I accepted at closing of my purchase of the property in 1993. It is now apparant (sic) that County Standards require more accurate documentation.
 4. At present there are no dwellings surrounding my property in adjoining lots (or across Uilani Drive) except at the rear property line. Should adjacent owners build, the tank does not obstruct view or encumber their full use of their lots.

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5. Moving the water tank would create financial hardship to me at this time when Hawaii's property values have decreased and the sales market value of homes is extremely low. In addition, piping from the rain gutters to the tank which I have already upgraded would have to be redone if the tank were moved.
6. I believe the water tank was installed when the house was built in 1979 and has been in place since then."

It appears that the water tank encroachment was built under B No. 790432 in 1979 within the affected side yard and open space requirements before the applicant acquired the property in 1993. The encroachments were undetected by the County building inspectors in 1979, other government agencies, and the public.

7. The Department of Public Works memorandum dated November 10, 1998, in the variance file states in part:

"We have reviewed the subject variance and have no comments to offer."
8. The Department of Finance-Real Property Tax memorandum dated November 18, 1998, in variance file states in part:

"There are no comments at this time

Real Property taxes are paid through December 31, 1998."
9. The State Department of Health (DOH) memorandum dated November 23, 1998, in the variance file states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
10. One objection to the variance application was received from a surrounding property owner on November 30, 1998.

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 affected side boundary lines. The existing water tank was constructed within the property's side yards.

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Therefore, considering the foregoing facts, circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner/applicant 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 or relocate the water tank within the correct building envelope prescribed by the Zoning Code, and other similar design 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 her 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 a valid building permit and issued in 1979 to the previous owners. Building inspections of the premises, during building construction and throughout the life of the original building permit in 1979 did not disclose any water tank setback irregularities. The current owner or applicant was not aware of the encroachment problem when she purchased the property in 1993.

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 within the side yards of the property. The existing building encroachments are not physically and visually obtrusive from the existing rights-of-way. It appears the water tank's encroachment does 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

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"footprint" and building encroachments built and established recently within the property's side 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 side 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 in the 1970's during the life of the building permits by government agencies did not discover any building encroachment or disclose any irregular water tank building setback problems. The existing water tank is not considered as "living area".

The subject variance application was deemed complete on October 21, 1998.

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 and 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:

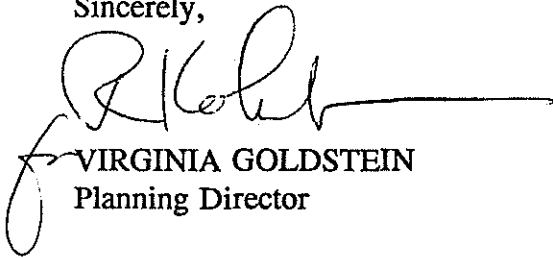
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is December 7, 1998.
2. The approval of this variance is only from the Zoning Code. The applicant/owner, successors or assigns shall indemnify 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 on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing water tank identified on the plot or site plan dated September 25, 1998 to remain on the subject property.

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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.

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

WRY/RK:jkg

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c: Real Property Tax Office
Jerry M. Veltmann, Esq.