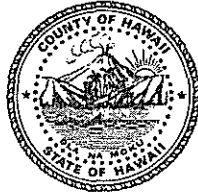


Stephen K. Yamashiro  
Mayor



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 101 317 973

August 24, 1999

Mr. Lawrence P. Peck  
PECK CONSTRUCTION, INC.  
16-643 Kipimana Street, Unit 14  
Keaau, HI 96749

Dear Mr. Peck:

VARIANCE PERMIT NO. 1046 (VAR 99-057)  
Applicant: LAWRENCE P. PECK  
Owners: SCOT HAY-ROE, ETAL.  
Request: Variance From the Minimum Yards  
Pursuant to Chapter 25, Zoning, Ratified April 6, 1999  
Tax Map Key: 1-1-059:001

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. 1046 allows portions of an existing water tank to remain within the affected front yard "AS BUILT" in lieu of the minimum front yard of 20 feet and 14 minimum open space requirements as required by the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (A) 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 front yard and open space requirements should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 15,700 square feet is Lot 373, Ohia Estates Subdivision, located at Keaau, Puna, Hawaii. The property's address is 11-3801-A Nahelenani Street. The property is zoned Single-Family Residential (RS-10) by the County.
2. The existing building improvements were constructed under a building permit (B No.912745) issued by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the site plans attached to the detailed building construction plans for the dwelling and water tank were reviewed and approved by the Planning Department and other affected government agencies. The required building inspections were conducted by DPW building inspectors and by representatives from other affected government agencies of all building improvements. B No. 912745 to construct the dwelling and water tank was opened on December 5, 1991 and closed on May 20, 1992 by the DPW.
4. The site plan drawing, drawn to scale and dated June 4, 1999, identifies the location of the existing water tank improvements within the affected front yard and denotes the water tank is 12.76 feet from the affected front boundary line. The water tank encroaches 7.24 feet into the affected front yard.
5. The applicant's attachment, dated April 14, 1999, states in part:

"Re: Lot 373 Ohia Estates Subdivision, TMK: (3) 1-1-59:1; Variance for Catchment tank setback.

The findings of a recent survey show that the catchment tank on subject property is within the building setback. The tank was erected under county permit #912745 in 1991. At the time of construction the Owners did not realize that the tank was within the setback.

I have reviewed the situation and have found that moving the tank would cause substantial financial hardship for the Owners. As one can see the photographs enclosed heavily wood (sic) the lot and there is no level ground in the

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surrounding or available area. Considering the grade, the vegetation and height of the eaves the present location of the tank is the obvious and optimum location for it."

Referring to the photographs:

- #1: This picture is taken from the Nahelenani St. looking toward the subject property at the catchment tank. This picture shows a considerable amount of vegetation between the tank and the roadway.
- #2: This picture was taken from the rear left corner of the house looking toward the subject property at the catchment tank. This picture shows the natural grade of the lot and part of the difficulty in attempting to relocate the catchment tank. Also not (sic) that the power pole and the guy wires are located at the roadway and any movement of heavy equipment necessary to excavate the lot would be difficult and possibly cause damage to the existing home.
- #3: This photo was taken from the front right side of the tank looking toward the rear side. In this picture the height of the natural grade around the tank.
- #4: This picture was taken from the center of the rear of the house looking toward the rear of the lot. The base of the hill or mound is evident in this picture. Also the water line running to the tank shows that the house is lower than the tank and relocating the tank to higher ground would raise the tank above the level of the gutters on the house.
- #5: This photo was taken from the rear left corner of the house looking toward the rear right corner of the house. Again this photo shows that the height of the natural grade in the rear of the house and that from the rear of the house the elevation of the lot increases.

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#6: This photo was taken standing in the rear center portion of the house looking straight back to the rear of the lot. This picture shows once again the hill and wooded area obstructing any relocation possibility.

Looking at the plot plan it is evident that the only relocation of the tank could be toward the center rear of the lot. That area, as shown in the photographs, is not suitable for a catchment tank. The nature of this lot having two fronts has created a limited building area that is unique."

6. The Department of Finance-Real Property Tax memorandum dated July 20, 1999, in the variance file states in part:

"There are no comments at this time"

"Current" (Status of real property taxes).

7. The State Department of Health (DOH) memorandum dated July 16, 1999, in the subject variance file states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

8. The Department of Public Works (DPW) memorandum dated July 9, 1999, states in part:

"We have reviewed the subject application and have no comments to offer."

9. The applicant submitted proof of service to serve first and second notice of the application on the designated and surrounding property owners.

The applicant and owner submitted a site plan which identifies the location of an existing dwelling improvements and covered water tank. The site plan submitted identifies the distances between the water tank encroachments and the affected front boundary line. Portions of the existing water tank were constructed within one of the property's two front yards.

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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 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/owner. Alternatives available to the applicant include the following: Removing the existing building encroachments within the correct building envelope prescribed by the Zoning Code, and other similar design alternatives, etc. Pursuant the site's existing grade and "lay of the land" and site topology conditions, 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 applicant and owner are honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the applicant or owner 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 owners or applicants 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 building improvements were constructed by the owner(s) under a single building permit. Building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any building setback irregularities on the corner lot. The current owner or applicant were not aware of any encroachment problems until the modern survey was performed.

The circumstances which permitted the existing building improvements to be built on the property are unique. The existing building encroachments have been built within one of the two front yards. The existing building encroachments are not physically and visually obtrusive from the surrounding property or existing right-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses,

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and the existing and surrounding land patterns. It appears, the existing water tank's "footprint" and building encroachments within the affected front yard have not visually, physically or adversely affected the rights of the adjacent or surrounding property owners. Therefore, it is felt the existing 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 affected front yard were caused by a unintentional mapping and building discrepancies or misinterpretation of the minimum yards during building construction and at the time of building construction to accommodate existing site topography. Inspection of the property during the life of the building permit by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

The subject variance application was acknowledged by certified letter dated July 7, 1999.

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 applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is August 16, 1999.
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 front yard and related permitted projections into yards and open space requirements. The approval of this

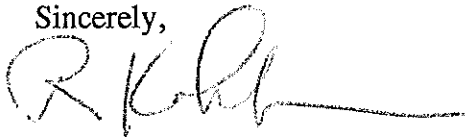
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variance allows the existing building improvements or a portion of the existing water tank identified on the plot or site plan dated June 4, 1999, to remain on the subject property.

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:gp  
F:\WP60\WRY\FORMLETT\VARAP112.HR2

c: Real Property Tax Office