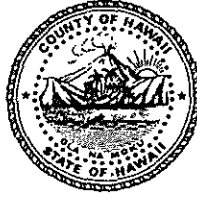


Stephen K. Yamashiro  
Mayor



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 095 324 315**

February 19, 1999

Mr. and Mrs. Jeffry S. Wallace  
P. O. Box 131  
Kahuku, HI 96743

Dear Mr. and Mrs. Wallace:

Variance Permit No. 990 (VAR 98-85)  
Applicants: JEFFRY S. WALLACE, ET AL.  
Owners: JEFFRY S. WALLACE, 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: 1-3-015:061, Lot 4

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. 990 allows the existing dwelling to remain within the affected side yard of 16.72 feet in lieu of the minimum 20 feet and open space of 13.09 feet in lieu of the minimum 14 feet open space requirements as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 side yard and open space requirements should be approved based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 1.00 acre is Lot 4, Block 12, File Plan 672, Leilani Estates Subdivision, Keahialaka, Puna, Hawaii. The property's address is 13-3489 Oneloa Street.

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2. It appears that the existing dwelling was constructed in 1994 under Building Permit No. 940298 issued to Jeff Wallace by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the original site plan and building construction plans submitted with the approved building permits in 1994 to construct 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 other affected government agencies of all building improvements on the property.
4. The site plan drawing, drawn to scale and dated October 9, 1998, by the True North Surveys, Inc., identifies the existing dwelling and water tank on the subject property. The site plan accurately denotes the minimum building setbacks required for the subject property.
5. The applicant's "REASONS FOR THE VARIANCE REQUEST", states:

"The majority of the property lots in Leilani Estates are laid out in a long and narrow configuration-approximately 100' X 400'. Because of this parameter, before construction of our home began, corner pins were established and we walked the entire area where we wanted to build. At this time it was noted that our property basically had three different levels to take into consideration along the 100' boundary with the lowest point being on the southern side and the highest point on the northern end. The logical choice for us when we had the property graded was to concentrate in the middle portion because with not much effort or expense, it could be leveled off for a house site. The low point was a good 8-10 feet below the house site and tended to flood during heavy rains. This is where we were advised to place and construct our cesspool. The high point extended up another 12-15 feet above the house site making it impractical also. We wanted to angle our house slightly in the rear portion so the morning and mid-day sun would shine into the back bedrooms. This added a pleasing quality not making them so dark and damp and it also provided a subtle visual change when looking in from the road.

This being said, the contractor we hired to build the foundation took his measurements off the corner pins. However, his visual sighting over the 400' span to the back of the property was incorrect placing the northern back corner of the house 3.28 feet into the setback zone. As noted, this side of the property is elevated with changes in topography so it is easy to see how a mistake could

have been made. It is true that we relied on the contractor to construct the foundation within the legal limits of the property but we take ultimate responsibility because we should have sought the services of a licensed surveyor to make sure we stayed within the code.

Realistically speaking, there are no reasonable alternatives for us to resolve the encroachment into the affected side yard of our property. The house was constructed under the new "hurricane" standards and is built extremely well.. Because it is just a corner of the house that encroaches, there is really no way to modify only that particular portion without it leading to major structural changes at a costly expense. In addition, having to relocate the house completely would destroy the integrity of the structure, lessen its value and would be financially impossible for us to do without causing severe hardship.

It is of our opinion that the granting of such a variance would not be detrimental to public welfare, the adjacent property or have any adverse impact on surrounding property within the neighborhood. For one thing, the affected part of our house is just a corner of the structure not the entire side. We purposely left the north side of the property in it's natural vegetative state and to the naked eye it is possible to tell the 3.28 foot protrusion of the back corner into the setback zone. As previously mentioned, the affected side has a dramatic topographical rise in elevation which carries over into the adjacent property as well. However, approximately 10-15 feet on the other side of our property line the topography changes radically again falling significantly into a deep ravine that runs parallel with our northern property line for some distance. We estimate that this ravine is as deep as our lowest property point if not lower making it highly unlikely anything would want to be constructed there. In other words it is possible we may never have a neighbor on that side because of the land layout. Finally, we haven't even used half of our property for the home construction and yard. The entire back portion of the lot (approx. 1/2 acre) remains uncleared in it's natural state for privacy thus shielding us from any neighbor on that side."

6. The Department of Finance-Real Property Tax memorandum dated January 28, 1999, in variance file states in part:

"There are no comments at this time

Real Property taxes are paid through December 31, 1998."

7. The State Department of Health (DOH) memorandum dated January 28, 1999, in the 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 February 12, 1999 states:

"We have reviewed the subject application and our comment is as follows:

All new building construction shall conform to current code requirements."

9. No objections to the variance application were received from the surrounding property owners.

The present owners/applicants submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the dwelling and the affected side boundary line. A portion of the existing dwelling was constructed within one of the property's two side yards.

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/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 owners/applicants. 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 dwelling would be economically unreasonable and may disrupt other existing site improvements.

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

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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 dwelling and water tank were constructed under a 1994 building permit issued to the current owners. Building inspections of the premises, during building construction and throughout the life of the original building permit in 1994 did not disclose any building setback irregularities. The current owners or applicants were not aware of the encroachment problem.

The circumstances which permitted the dwelling to be built on the property are unique. The existing building encroachments have been built within one of 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 dwelling'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 dwelling's "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 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 property's side yard were created and induced by a accumulation of mapping discrepancies and interpretation of the minimum yards during building permit review. Inspection of the property during 1994 during the life of the building permits 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 January 25, 1999. Pursuant to a recent December 1998 ruling and court decision, additional time to consider the processing requirements of variance applications from the Zoning Code was necessary.

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.

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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 February 19, 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 dwelling 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 October 9, 1998 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  
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c: Real Property Tax Office