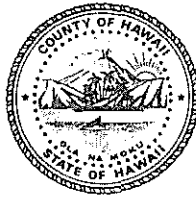


Stephen K. Yamashiro  
Mayor



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

7099 3220 0000 4868 9942

June 30, 2000

Dr. Brian Sumida  
c/o Ms. Donna Herbst  
CLARK REALTY  
99 Aupuni Street, Suite No. 118  
Hilo, HI 96720

Dear Dr. Sumida:

**VARIANCE PERMIT NO. 1136 (VAR 00-035)**  
**Applicant: BRIAN SUMIDA**  
**Owner: BRIAN SUMIDA**  
**Request: Variance From Minimum Yards,**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: 1-8-060:045, Lot 220**

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. 1136 allows portions of an existing dwelling and water tank "AS BUILT" to remain on the subject property with a minimum side yard of 8.93 feet and 9.26 feet, respectively, in lieu of the minimum 10 feet side yard as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, and Section 25-5-77, Other regulations, respectively.

#### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow portions of the existing dwelling and water tank to remain within the affected side yard should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 12,005 square feet is Lot 220, Aloha Estates Subdivision, Unit 1, Olaa, Puna, Hawaii.

It appears the subject property was designated Agriculture "A" by the State Land Use Commission (SLUC) and in 1967 was zoned Agricultural (A-1a) by the County. The parcel's width and area are less than the minimum building width and minimum area requirements of the Zoning Code. The subject lot was legally subdivided and created prior to the adoption Zoning Code in 1967. Lot 220 is considered to be a legal non-conforming sized parcel.

2. It appears that the existing dwelling, water tank, and other related site improvements were constructed under two (2) building permits (B No. 830734 and B No. 830982) issued in by the Department of Public Works (DPW), Building Division in Hilo.
3. It appears the original site plans attached to the original building drawing plans for the dwelling, water tank, and other related site improvements 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 on the property. The building permits were closed by the DPW Building Division.
4. The map showing existing conditions, drawn to scale and dated March 14, 2000, by the Independent Hawaii Surveyors, identifies the existing dwelling and water tank building encroachments located on the subject property.
5. The attachment dated "April 18, 2000" entitled "APPLICANT'S REASONS FOR REQUESTING A VARIANCE" states in part:

"The subject property is located at Lot #220 in Aloha Estates Subdivision, District of Puna, a subdivision comprised mostly of 12,005 sq. ft. lots. Upon receipt of the survey, it was discovered that there are no encroachments across the boundaries of this property, however the water tank projects 0.74 ft (sic) in the County Zoning Code building 10-ft (sic) setback of the northeast boundary: the storage room projects 1.07 ft (sic) and the residence are all connected, the removal of any of theses improvements would be quite difficult. Owner owns both the subject and adjoining lot. It is not the owner's wish to have these lots consolidated.

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All structures on the property were built with a permit, including the existing cesspool. See attached report from the County Building Dept. along with the cesspool card from the Dept. of Health. Since the property was built in 1983, the new owners were not aware of this problem until recently revealed on the survey provided at time of closing.

Since the owner of the subject property is also owner of the adjoining property, Lot #219, it would most likely affect his own adjoining lot only. It would be helpful to "clean up" the logistics of this property if a variance were to be granted to Dr. Sumida. We request your department's favor in granting this decision, as the present owner had no control over the situation."

Note: The above narrative refers to copy of a DPW memorandum, dated July 30, 1999, submitted with the variance application.

6. The Department of Public Works (DPW) memorandum dated May 17, 2000, in the subject variance file states in part:

"We have reviewed the subject application forwarded by your memo dated May 5, 2000 and have no comments or objections to the request."

7. The State Department of Health (DOH) memorandum dated May 10, 2000, in the subject variance file states:

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

8. Finance-Real Property Tax Office memorandum dated May 30, 2000 states in part:

"There are no comments at this time"

"Current"

"Real Property taxes are paid through June 30, 2000."

9. Proof of service or of good faith efforts to serve notice of the variance application on the designated property owners within 500 feet of the subject property was submitted by the applicant's representative on June 9, 2000. In addition to foregoing, the applicant's representative submitted an "Affidavit of Mailing" on May 1, 2000 and May 25, 2000, respectively.

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No oral or written objections to the applicant's request or variance application were received by the Planning Department.

The applicant submitted a site plan, which identifies the location of an existing dwelling, water tank, and other related building improvements. The site plan received from "The Independent Hawaii Surveyors" identifies all building encroachments and distances between the encroachments from the respective boundary line(s). Portions of the existing dwelling and the water tank were constructed within one of the property's two side yards.

Therefore, considering the foregoing facts, it is felt that 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 current owner or 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. The removal of the building encroachments or the re-sitting, redesign, and remodeling, etc. of the existing dwelling and water tank would be economically unreasonable and may disrupt other existing site improvements.

The Planning Department acknowledges there may be other design or building alternatives available to the owner or 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 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 affected portions of the existing dwelling and other site improvements were constructed under two (2) building permits issued by Hawaii County. The current owner/applicant did not discover the encroachments until a modern survey of the property was prepared for escrow.

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 side yards. The existing building encroachments are not physically and visually obtrusive from the existing right-of-way. The applicant also owns the adjacent vacant property, Lot 219, and did not

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wish to pursue a consolidation/resubdivision option to change the lot dimensions and lot sizes of Lot 219 and Lot 220 to abate the existing encroachments. It appears the building encroachments do not depreciate or detract from the character of Lot 219 or the surrounding neighborhood and the existing and surrounding land patterns. It appears the existing building encroachments built and established on the property 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 affected side yard were created and induced by an accumulation of mapping and building discrepancies or interpretation of the minimum yards during building construction by the previous owners. Inspection of the property during the life of the building permits by government agencies did not discover any building encroachment or disclose any irregular building setback problems.

#### DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department on April 20, 2000 and acknowledged by certified letter dated May 5, 2000.

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/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
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.
2. Portions of the existing dwelling and water tank located on the subject property will not meet Chapter 25, the Zoning Code's, minimum side yard requirements. The approval of this variance allows the affected portion of the existing dwelling and water tank within the affected side yard identified on the site plan submitted

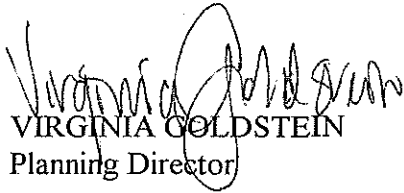
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with the variance application to remain on the subject property.

4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction, minimum building yards, 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:dk  
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cc: Real Property Tax Office