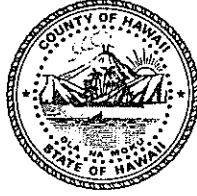


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

May 14, 2002

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
RR3 Box 1164  
Puna, HI 96778

Dear Mr. White:

**VARIANCE PERMIT NO. 1283 (VAR 01-088)**

**Applicant: TRUITT A. WHITE**

**Owners: WATERS OF LIFE PUBLIC  
CHARTER SCHOOLS**

**Request: Variance from Minimum Yards and  
Open Space Requirements,  
Pursuant to Chapter 25, the Zoning Code**

**Tax Map Key: 1-4-064:001, (Lot 299-A:CONS.), and 030 (Lot 328)**

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions stated herein. Variance Permit No. 1283 allows portions of the dwelling located to remain on Lot 299-A, "AS BUILT", and a water catchment storage tank to remain on Lot 328, "AS BUILT", according to the variance application's site plan dated November 2, 2001. Portions of the dwelling encroach a maximum 1.87 feet into a minimum 10 feet side yard and 1.11 feet into the attendant minimum 5 feet side yard open space requirements of Lot 299-A. Portions of the water tank encroach a maximum of 1.49 feet into the minimum 15 feet rear yard of Lot 328. The variance request is from the subject lot's minimum yards pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 2, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

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MAY 14 2002

## **BACKGROUND AND FINDINGS**

1. **Location and Zoning.** The subject property(s), Lot 299-A containing 16,230 square feet and Lot 328 containing 8040 square feet, respectively, are located within the Nanawale Estates Subdivision, Unit 2, File Plan 780, and situated at Puaa, Puna, Hawaii.

The subject TMK property is zoned Agricultural (A-1a) and designated Urban "U" by the State Land Use Commission. These land area of both lots or parcels are below the minimum 1.0 acre (43,520 square feet) zoning requirement and are "non-conforming parcels" by the Zoning Code.

2. **Application.** The applicant submitted the variance application form, supplemental information, tax clearance, and \$250.00 filing fee check on December 4, 2001.
3. **Site Plan.** The applicant's map or site plan drawing, drawn to scale and dated November 2, 2001 was surveyed and prepared by The Independent Hawaii Surveyors. The site plan denotes and identifies the location of the dwelling-"TWO STORY HOUSE" on Lot 299-A and location of the "WATER TANK" on Lot 328. The site plan identifies the minimum yards and building envelope(s) prescribed by the Hawaii County Zoning Code within the lot(s).
4. **Building Permit(s).** According to county records, all building permits issued to allow the dwelling improvements on Lot 299 were closed or "finaled" by the DPW-Building Division. No record of a building permit to construct the water tank on Lot 328 (TMK: 1-4-064:030) was discovered or found. (See variance conditions below).
5. **Agency Comments and Requirements (VAR 01-088).**
  - a. The applicant submitted a copy(s) of "REAL PROPERTY TAX CLEARANCE" dated December 3, 2001 stating in part the following:

"TMK (s): (3) 1-4-064-001"

"This is to certify that WATERS OF LIFE (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including December 31, 2001."

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
Page 3  
May 14, 2002

Reference: Truitte White"; and,

"REAL PROPERTY TAX CLEARANCE" dated December 3, 2001  
stating in part the following:

"TMK (s): (3) 1-4-064-030"

"This is to certify that WATERS OF LIFE (owner of record) has paid all  
Real Property Taxes due the County of Hawaii up to and including  
December 31, 2001."

Reference: Truitte White"

- b. The State Department of Health (DOH) memorandum dated January 2,  
2002, states:

"We have no objections to the proposed variance application. However,  
minimum setback requirements for existing wastewater systems needs to  
be maintained."

- c. The Department of Public Works (DPW) memorandum dated January 22,  
2002, states:

"We have reviewed the subject application forwarded by your memo dated  
December 18, 2001 and oppose the approval of the application for the  
reasons noted below.

Electrical permit EH57213 for the subject dwelling was never finalized.  
Notice of Violation was issued on May 7, 2001 and has not yet been  
resolved. Please refer questions regarding the permit to the Building  
Division at 961-8331.

Hapuu Road and approximately 30 feet of Molokai and Kauai Roads are  
owned and maintained by the County of Hawaii. Remove the wire fence,  
wall(s) and any other encroachment within the County right-of-way.

Questions may be referred to Kelly Gomes at ext. 8327."

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
Page 4  
May 14, 2002

6. **Notice to Surrounding Owners.** The applicant submitted proof of mailing a first notice and receipts showing the second notice was mailed on December 29, 2001.
7. **Comments from Surrounding Property Owners or Public.** No further written comments from the agencies were received.

The Planning Department received an objection letter from Darwin Barue on December 27, 2001. (It appears that Mr. Barue lives " 2 blocks" from the subject dwelling on Lot 299-A).

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

In consideration of the applicant's submittals and findings above, portions of the the existing dwelling now encroach within the minimum 10 feet side yard and attendant minimum 5 feet side yard open space requirements of Lot 299-A according to Chapter 25, the Zoning Code. The recent additions to the original dwelling and water tank improvements were inadvertently constructed by previous owner(s) or builders into the side yard of Lot 299-A and rear yard of Lot 328, respectively. It appears that the water tank is located within Lot 328's minimum rear yard. The applicant's site plan map submittal identifies or denotes the location of the "TWO STORY HOUSE" (dwelling) encroachments on Lot 299-A and "WATER TANK" encroachments on Lot 328 which have been constructed beyond the respective minimum "building line" or "10' BUILDING SETBACK" and "15' BUILDING SETBACK" which are graphically identified by a series of "dashed" lines within the both lots. The bulk of the dwelling and water tank are within the respective building envelope(s) prescribed by the Zoning Code and meet minimum yard(s) and open space requirements.

It appears that the building encroachment problems were discovered during a recent sale of the subject property. The site plan denote(s) "AS BUILT" distances between the dwelling and water tank from the affected boundary line(s). It appears that the applicant(s) and/or builders were unaware of the building setback problems, encroachment issues, and dependence of the improvements established on the respective lots. No evidence has been found to show indifference or premeditation by the applicant or current owners/builders to deliberately build or intentionally allow the building encroachment problems. The applicant submitted the variance application to address and resolve the building encroachment and building position issues affecting both parcels or lots.

It appears that the existing dwelling improvements were constructed under valid building permits issued to the previous owners between 1974 and 1992. It appears that building inspections of the

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
Page 5  
May 14, 2002

premises during building construction throughout the life of the building permits did not disclose any building encroachments or building setback irregularities.

Therefore, considering the applicant's submittals, findings, and existing circumstances at this time, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant or current owners of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the current and best use of the subject property.

#### **ALTERNATIVES**

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the current owner(s) or applicant to address and correct the existing building encroachments include the following actions:

1. Remove the existing building encroachments and truncate portions of the 2-story dwelling and respective roof eaves that encroach into the Lot 299-A's side yard and side yard open space requirements of the Zoning Code. Remove portions of the water tank within the rear yard of Lot 328's rear yard.
2. Redesign and relocate the existing dwelling and water tank improvements to fit within the building envelope(s) prescribed by the Zoning Code and other design and remedial building alternatives.
3. Consolidate the subject parcels or lots (Lot 299-A with Lot 328) to address and eliminate the encroachment issues on Lot 328 or consolidation/resubdivision with the adjoining lot (Lot 300), etc.

To require or impose partial removal of the dwelling and attendant roof eave(s) and water tank to meet the Zoning Code's minimum yards and open yard requirements on Lot 299-A and Lot 328, respectively, would seem unreasonably harsh and uneconomical at this time. The removal of the building encroachments or relocation of these existing improvements may disrupt the 2-story dwelling's and water tank's structural integrity, change internal room lighting and air circulation, and change the building's overall building geometry and exterior character, as well as other dependent functions between permitted use(s). Consideration to further consolidate the subject parcels or consolidate/resubdivide with other adjoining parcels or lots, pursuant to Chapter 23, Subdivisions, was not considered.

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
Page 6  
May 14, 2002

The Planning Department acknowledges there may be other design or building alternatives available to the applicants and owners beyond those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant or current owners 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 circulation and exposure to light are available between permitted structure(s) and boundary/property lines. The applicant, on behalf of the current owners are trying to resolve building dwelling and lanai encroachment issues were disclosed after a modern survey of both lots or subject TMK property(s) to confirm boundary corners and locate existing building improvements was performed and a map of the TMK property(s) showing and identifying the existing building improvements, "AS BUILT" was prepared for escrow purposes.

The circumstances to allow and permit the existing dwelling and water tank encroachments to be built within that affected yards and attendant side yard open space requirements approximately 25 years ago are unique and water tank encroachments are unique.

It appears that the commencement of building activity and the dwelling and water tank encroachments built into or within that affected yard(s) were not perceptible and not physically and visually obtrusive from adjacent TMK property(s) or the rights-of-way. Other than the outstanding electrical permit, inspections of the TMK property(s) during the life of the building, electrical, and mechanical permits issued between 1974 and 1998 did not discover any dwelling encroachment problems or reveal and disclose any irregular building problems. Therefore, it is felt that the existing building encroachments within Lot 299-A's side yard and attendant side yard open spaces and building encroachments within Lot 328's rear yard will not detract from the character of the immediate neighborhood or other surrounding property within the subdivision.

The subject variance application was acknowledged by letter dated December 4, 2001. The applicant's agent agreed to extend the variance decision date to no later than May 17, 2002.

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.

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
Page 7  
May 14, 2002

### VARIANCE DECISION AND CONDITIONS

The variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), 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. Portions of the existing dwelling on Lot 299-A encroach into the side yard and attendant side yard open space and portions of the water tank on Lot required by Chapter 25, the Zoning Code and are identified on a site plan map dated May 14, 2001 submitted with the variance application. The approval of this variance allows portions of the dwelling encroachments, AS BUILT" within a side yard and attendant side yard open space to remain on Lot 299-A. The approval of this variance allows the water tank and water tank encroachments constructed on Lot 328 to remain, "AS BUILT", subject to further DPW building permit requirements.

Electrical permit EH57213 shall be addressed by the applicant/current owner(s) and "finaled" or closed by the DPW-Building Division prior to any further transfer of title or sale of Lot 299-A or sale of the subject TMK property(s).

Any structural or mechanical or plumbing connections or dependence between the building improvements located on the respective lots or subject TMK property(s) or any structural connections constructed between the respective lots or subject TMK property(s) prior to November 2, 2001 shall be abandoned and disconnected prior to any further transfer of title or any future sale of the subject lots or TMK property(s).

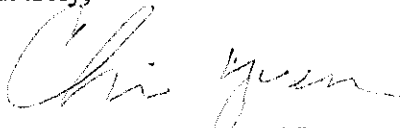
The chain link fence, wire fence, and walls denoted on the November 2, 2002 site plan and constructed within the respective County rights-of-way shall be removed prior to any transfer of title or sale of the subject lots or TMK property(s).

Mr. Truitt A. White  
WATERS OF LIFE  
PUBLIC CHARTER SCHOOLS  
Page 8  
May 14, 2002

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling on Lot 299-A or Lot 328 shall be granted, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building additions or improvements and permitted uses on both lots or the subject TMK property(s) 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,



CHRISTOPHER J. YUEN  
Planning Director

WRY:pak  
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xc: Real Property Tax Office - Hilo  
Planning Dept.-Kona  
Mr. Darwin Barue