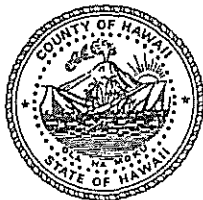


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

May 12, 2005

Ms. Debbie Vicar  
P. O. Box 106  
Ninole, HI 96773

Dear Ms. Vicar:

#### **VARIANCE PERMIT NO. 1513 WH (VAR 04-058)**

**Applicant:** DEBBIE K. VICAR  
**Owner:** DEBBIE K. VICAR  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 1-3-021:012, Lot 53

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1513 allows portions of a "WATER TANK", As-Built, to remain on Lot 53 with a minimum 9.0 feet + side yard and attendant minimum 9.0 feet side yard open space requirements in lieu of the minimum 20 feet side yard and attendant minimum 14 feet side yard open requirements pursuant to the variance site plan map (Revised December 14, 2004). The variance request is from Hawaii County Code, Chapter 25, from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, 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 space requirements, (a).

#### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 53 containing 1.000 acre, is within Block 26, Leilani Estates Subdivision, File Plan No. 672, and situated at Keahialaka, Puna, Hawaii.

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The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about June 9, 2004. The original and revised variance application site plan map(s) are drawn to scale and dated May 6, 2004 and December 14, 2004, respectively. The revised site plan map denotes the location of the "WATER TANK" encroachments, "AS-BUILT" into the minimum side yard and attendant open yard or clear space requirements.

**Note:** The applicant submitted the revised site plan dated December 14, 2004 on April 7, 2005 showing the dwelling and water tank position(s) on Lot 53. The variance request does not address any clearing or removal of planting materials near or along a common side boundary line shared between the subject TMK property-Lot 53 and adjoining property-Lot 54. The removal of trees or planting materials straddling common boundary line(s) or boundary issues must be addressed and resolved by the applicant or between legal property owner(s).

3. **Agency Comments and Requirements-WH (VAR 04-058):**
  - a. The Department of Public Works (DPW) memorandum (original variance site plan map) is dated July 15, 2004.

**Note:** The original dwelling encroachments within the affected side yard and adjoining property-Lot 54 were removed or relocated pursuant to the revised survey map dated December 14, 2004.

- b. The State Department of Health (DOH) memorandum dated August 3, 2004 states:

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

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on June 9, 2004 and July 7, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter and additional

letters and submittals were received:

- a. A letter dated and signed July 2, 2004 by Jeffery Walker objecting to the applicant's original variance request. A copy of Walker's letter and comments was forwarded to the applicant.
- b. Applicant's letter dated July 23, 2004 responding to Walker's letter and colored photographs were received. The Planning Department's Zoning Inspector visited the property on or about July 28, 2004 to confirm the building positions. According to the Zoning Inspector, the water tank is approximately 9.25 feet from a (side) property line.
- c. Applicant's letter dated August 18, 2004 requesting a time extension to address the building encroachment issues. Subsequently, the applicant-owner secured a building permit to remove the dwelling encroachments denoted on the original variance site plan map. A copy of a revised site plan map prepared and signed by a surveyor dated December 14, 2004 showing the "AS-BUILT" dwelling and water tank position(s) was submitted to the Planning Department on April 7, 2005.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant-owner, is trying to resolve the building encroachment issues. The variance application's revised site plan map was prepared by a surveyor and denotes the location of the building improvements and other site improvements, "AS BUILT" on "LOT 53".

The site plan identifies the water tank encroachments within the property's affected side yard and attendant open yard requirements pursuant to the Hawaii County Zoning Code.

The applicant-current owners became aware of building encroachment issues after the original survey map was prepared for escrow. County records show the dwelling and water tank improvements were built pursuant to building permit(s) and other construction permits issued by the DPW. It appears that the building inspections of the premises throughout the life of the building permit or construction permits to build the dwelling/water tank did not disclose any encroachment issues or building setback irregularities.

### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

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1. Remove the building encroachments (WATER TANK) or relocating the water tank to fit within the correct building envelope prescribed by the Zoning Code. Note: The dwelling encroachment issues identified on the original variance site plan map were addressed and corrected by the applicant-owner after the variance was filed.
2. Consolidation of Lot 53 with adjoining property (Lot 54) and resubdivision to modify property lines and adjust minimum yards.

### **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)/uses and boundary/property lines.

Portions of the water tank within the affected side yard and required open spaces are not physically and visually obtrusive from adjacent property (Lot 54) or visible from the right-of-way fronting Lot 53. The water tank encroachments do not depreciate or detract from the character of the surrounding neighborhood, public rights-of-way, and surrounding land patterns. Therefore, it is felt that the encroachments within the respective side yard identified on the variance application revised site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The original variance request or subject variance application was acknowledged by letter dated June 25, 2004. Additional time was requested by the applicant to address or remove the dwelling encroachments and verify compliance and complete the variance background 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.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

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.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the

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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 "WATER TANK" located on the subject TMK property or Lot 53 will not meet Chapter 25, the Zoning Code's minimum side yard and attendant minimum open yard requirements. The approval of this variance allows the water tank encroachments within a side yard of LOT 53 to remain, "AS- BUILT", pursuant to the applicant's revised variance site plan map dated December 14, 2004.
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 53), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
5. 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,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cd

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xc: Real Property Tax Office-Kona  
Planning Department-Kona  
Jeffery Walker