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## County of Hawai'i PLANNING DEPARTMENT

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Director

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January 11, 2021

Robert B. Skankey  
Mamane House LLC  
2616 Running Iron Street  
Kingman, AZ 86401-1793

Dear Mr. Skankey:

**SUBJECT: Application: Variance - VAR 19-000557**  
**Applicant: ROBERT B. SKANKEY**  
**Owner: ROBERT B. SKANKEY (MAMANE HOUSE LLC)**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Southeast Rear Yard Setback)**  
**Tax Map Key: (3) 1-1-057:045 (Lot 17)**

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The Planning Director certifies the **approval** of Variance 19-000557, subject to conditions. The variance will allow for the galvanized water tank to remain with a minimum 7.1 feet rear (southeast) yard setback and rear yard open space. These exceptions are in lieu of the required 15-foot rear yard setback and 10-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 9.150 square feet and is in the 'Ōhia Estates Subdivision, Kea'au, Puna, Hawai'i. The subject property's street address is 11-3703 Old Volcano Road.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).

3. **State Land Use Designation.** Urban.
4. **Required Setback.** 15 feet for front and rear; 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 6, 2019. The variance application site map was prepared by Daniel L. Berg, LPLS (dlb & Associates). **(See Exhibit A-Site Plan)**

The galvanized water tank encroaches 7.9 feet into the 15-foot rear (southeast) yard setback.

The encroachment leaves the galvanized water tank with a minimum 7.1-foot rear (southeast) yard setback and open space, in lieu of the required 15-foot side yard setback and 10-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that the following building permits were issued.
  - a. Building Permit 930632 was issued April 12, 1993, for the construction of a two-story single-family dwelling consisting of two (2) bedrooms, 1 bath, living room, dining area, kitchen and a detached galvanized water tank. Permit finalized on August 24, 1993.
  - b. Building Permit B2009-0179H issued on January 30, 2009, for an "as-built" addition/alteration to existing dwelling (BP#930632) dwelling-final 08/24/1993 (no changes to second level).

"as-built" addition:

1. 8'x8' open concrete lānai.
2. 8'x8' open-covered lānai on grade.
3. 13'-8"x8' enclosed storage room.

"as-built" alteration:

1. converted open-utility area with carport on grade into "as-built" 7'-2"x8'-2" closet / 8'-10"x8'-2" bathroom (lavatory / water closet / shower stall) / 15'-10"x16'-0" bedroom / 24'x20' family room.
2. Converted existing 20'-4"x4'-0" laundry room into 12'-8"x4' enclosed laundry room with existing fixtures.

3. Enclosed staircase going to second level “as-built”, alteration cost \$4,800.00
4. Permit finalized March 25, 2009.

**7. Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated November 23, 2019: “Based on IWS records provided with this variance application, it appears that some or all septic system may not conform to minimum spacing requirements outlined in HAR 11-62. If this is the case, the system will have to be relocated. Please consult a civil engineer.”
  - b. No comments received from the Department of Public Works, Building Division (DPW).
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on October 30, 2020. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on November 26, 2019.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant’s variance application was received on November 6, 2019; additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until January 11, 2021.

**ANALYSIS OF GROUNDS FOR VARIANCE**

No variance will be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or 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 property.*

**The variance application meets criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment of the galvanized water tank into the 15-foot (southeast) rear yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. The galvanized water tank authorized under building permit 930632, was issued on April 12, 1993. It appears that building permit inspections of the premises by the affected agencies during construction of the galvanized water tank did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

*(b) There are no other reasonable alternatives that would resolve the difficulty.*

**The variance application meets criteria (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the single-family dwelling encroachments constructed into the affected side yard setback of the subject property include the following actions:

Relocate the single-family dwelling denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling followed all County requirements.

Because the encroachment is within the rear yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum rear yard setbacks are not viable options. Therefore, both alternatives are not practical.

*(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

**The variance application meets criteria (c) for the following reasons:**

The intent and purpose of requiring structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

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

Based on the variance application's survey map, the detached galvanized water tank built upon the subject property ("LOT 17) will not meet the minimum rear yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

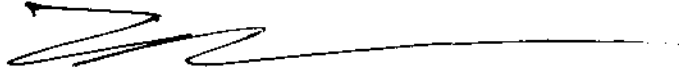
This variance application is approved subject to the following variance conditions:

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 Hawai'i 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/owner(s), their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the detached galvanized water tank built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Robert B. Skankey  
Mamane House LLC  
January 11, 2021  
Page 6

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-19-000557 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'ZENDO KERN', with a long horizontal line extending to the right.

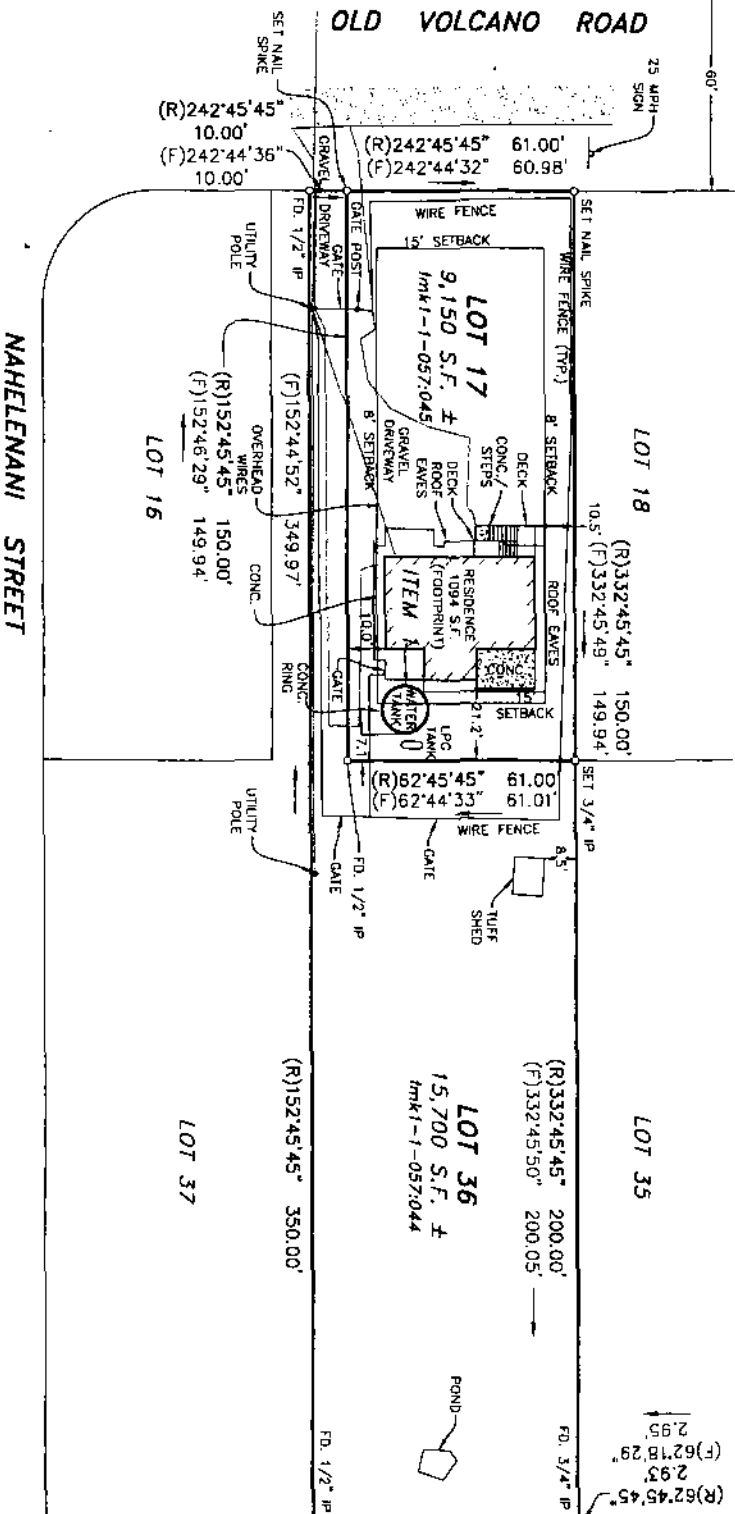
ZENDO KERN  
Planning Director

LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR19-000557 TMK 1-1-057-045 Stankey.docx

Encl: Exhibit A - Site Plan

cc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)

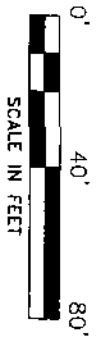


NAHELEMANI STREET

**Boundary and Improvement Survey**

Of Lot 17 and 36, Ohia Estates Subdivision,  
Keau, Puna, Island and County of Hawaii.

TMK(S) 1-1-057: 044, 045



**dlb & Associates**  
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www.dbandassoc.com



Daniel L. Berg  
PLS 11245

This work was prepared by me or  
under my direct supervision.

**EXHIBIT**  
**A**

- NOTES:**
1. This K-2 field survey completed January 25, 2017.
  2. (F) Indicates field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.22 ft. (n=42)
  3. (R) Indicates Record dimensions per land Court Application 1053, Map 68.
  4. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM\_' and described in the attached report.
  5. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.

Date: January 31, 2017  
Escrow: Title Guaranty #16088811

Project: J2017-019  
BX14L