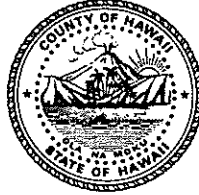


Stephen K. Yamashiro
Mayor



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) 961-9615

CERTIFIED MAIL
P 364 305 211

September 22, 1997

Mr. and Mrs. Homer A. Maxey
P.O. Box 210
Hawaii National Park, HI 96720

Dear Mr. and Mrs. Maxey:

Variance Permit No. 855 (VAR 97-42)
Applicant: HOMER A. MAXEY. ET AL.
Owner: HOMER A. & MAHINA T. MAXEY
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: 9-9-004:019, Lot 66

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. 855 allows the existing two story dwelling situated on the subject property to have one side yard being minimum nine (9.0) feet and allows the existing steel water tank to be relocated on and within the subject property with a minimum side yard of three (3.0) feet +/- in lieu of the minimum ten (10) foot side yard required for the subject property zoned Single-Family Residential Districts (RS-10).

The variances requested are from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2), (B), and clear space for the water tank in lieu of a minimum five (5.0) feet side yard open space requirement pursuant to Section 25-4-44 (a) (1), Permitted Projections Into Yards and Open Spaces.

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FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum side yards and associated open space requirements should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel's address is 99-1780 Painui Loop. Lot 66, containing 11,200 square feet is zoned Single-Family Residential (RS-15) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).
2. It appears the existing dwelling and related site improvements on Lot 66 were constructed pursuant to building permit (B No. 812494) issued by the Department of Public Works (DPW), Building Division in Hilo. B No. 812494 was opened on October 10, 1981, and closed on July 15, 1982, by the DPW, Building Division in Hilo.
3. The site plan drawing, drawn to scale, by Robert S. Bright, RPLS, identifies the dwelling's location on the subject property. The site plan accurately identifies the minimum building setback lines and location of the existing building encroachments within the affected side yard. The existing two story or split level dwelling and steel water tank exhibits the following range of side yard dimensions; 9.5 feet between the face of the dwelling and the respective side property line and also, includes annotations by the existing owner(s) which identifies the proposed tank location on the subject property.
4. The records in the DPW, Building Division show only one (1) building permit, B No. 812494 was issued to Mr. and Mrs. Norman Johnson to construct and establish the existing dwelling and related building improvements situated on the subject parcel or Lot 66. Subsequent to the issuance of the building permits, it appears the electrical permits and plumbing permits were also obtained from the DPW, Building Division. In addition to the foregoing, a building permit, B No. 821018, was issued to Norman F. Johnson on June 3, 1982, to construct a 10,000 gallon steel water tank on the property adjacent to Lot 66; commonly referred to as TMK: 9-9-004:065, Lot 65.

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It appears the water tank constructed under B No. 822494 was built and used to store water for the subject dwelling located on Lot 66. B No. 812494 and B No. 822494 were issued to Norman Johnson, et al. required building inspections by the affected government agencies of the new dwelling and water tank during the life of B No. 812494 and B No. 822494. B No. 812494 and B No. 821018 were completed or closed by the DPW, Building Division on July 15, 1982.

5. It appears the original and subsequent site and building construction plans submitted with the approved building permits were reviewed and approved by the Planning Department and other affected government agencies.
6. The applicant's statements included with the subject variance application imply the approved building and existing building encroachments within the affected side yards went undetected by the County, other government agencies, and the public.
7. No comments were received from the any of the agencies concerning the subject variance application. No objections to the variance application were received from the surrounding property owners.
8. The following statements are extracted from the a submittal "VARIANCE REQUEST", attached to the variance application:

The owner(s)/applicant(s) recently discovered and identified the existing building encroachments within a portion of one side yard. The current owner or applicant became aware of the building encroachments and water tank misplacement during a pending real estate transaction and after a detailed boundary or site plan was ordered and prepared by a Registered Professional Land Surveyor for inclusion with the subject variance application.

Therefore, considering the foregoing facts and existing site improvements, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner(s)/applicant(s) 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.

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ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owner(s)/applicant(s). Alternatives available to the applicant include the following: Removing the existing building encroachments together with the effected roof eaves resulting in a smaller living space; or relocate the dwelling or construct a new dwelling 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 possibly disrupt the dwelling's building integrity, existing interior room circulation, and disrupt other existing site improvements.

The current owner or applicant, on his own volition, is honestly trying to resolve fifteen (15) year old building encroachment problems. No evidence has been found to show indifference or premeditation by the previous owners or builders in 1981 and 1982 to deliberately or intentionally ignore the existing property boundary lines or misplace the dwelling location and water tank on the respective lots.

The Planning Department acknowledges there may be other design or building alternatives available to the owners/applicants recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owner 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 existing dwelling and related building improvements were constructed under a valid building permit issued to the applicant/owner. Building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any dwelling and water tank setback irregularities. It appears the previous owner(s) felt all Zoning Code and building permit requirements and government procedures were being observed and that all County building permit requirements were satisfied or met.

The existing building encroachments have been built within one of the property's side yards. The existing building encroachments and proposed tank relocation into the respective side yard will not be physically and visually obtrusive from the existing private and public rights-of-way.

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The existing dwelling's design and related site improvements are similar to other existing dwellings built near the property and within the subdivision. The building encroachments do not depreciate or detract from the character of the surrounding neighborhood, existing residences, public uses, and the existing and surrounding agricultural and urban land patterns. It appears, the existing building's "footprint" and building encroachments built and established over fifteen (15) years ago within one (1) of the property's two (2) side yards have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the present location and existing building encroachments and tank relocation will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments into the affected side yard were perpetuated or induced by accumulation of construction errors. The bulk or remaining portion of the "living area" within the existing "Dwelling" identified on the applicant's site plan complies with the minimum yards of the Zoning Code, dated December 7, 1996.

The subject variance application was deemed complete on June 10, 1997. Pursuant to a September 8, 1997, telephone conversation with Mr. Homer A. Maxey, an extension of time until September 22, 1997, to render a decision on the subject variance application was mutually agreed upon.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; 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(s)/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant(s)/owners have identified and acknowledged the subject dwelling's building encroachments and steel water tank were built and established within the side yards and open space of the subject property.

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A portion of the existing dwelling on the subject tax map key property established and steel water tank location does not comply with the minimum side yard and permitted projection requirements prescribed by the Chapter 25, Zoning dated December 7, 1996. The applicant(s)/owners, 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 approval of this variance is only for the portion of the dwelling and eave built and established in 1982 within the affected side yard and for placement of the existing steel water tank to be situated within the affected side yard.
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:cjf
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xc: Real Property Tax Office