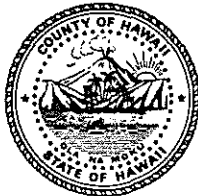


Stephen K. Yamashiro
Mayor



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 364 305 209

September 19, 1997

Mr. John L. Saplan
P.O. Box 4423
Hilo, HI 96720

Dear Mr. Saplan:

Variance Permit No.857 (VAR 97-50)

Applicant: JOHN L. SAPLAN

Owner: JOHN L. SAPLAN

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: 1-1-006:146, Lot 66-A

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.857 allows the dwelling's existing water tank to be situated on the subject property with a rear yard being minimum 0.25 feet or 3 inches in lieu of the minimum twenty (20) foot rear yard required for the subject property, zoned Single-Family Residential (RS-20), Article 5, Division 1, Section 25-5-7, Minimum yards, (a), (2) and clearance of 0.25 feet in lieu of a minimum fourteen (14) feet rear yard open space requirement pursuant to Section 25-4-44 (a), (1), Permitted Projections Into Yards and Open Spaces.

FINDINGS AND RECOMMENDATION

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

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject parcel, Lot 66-A, containing 13,816 square feet, is a Portion of Ld. Ct. App. 1053, Keaau Puna, Island and County of Hawaii. The property is zoned Single-Family Residential (RS-20) by the County. The property is designated Urban "U" by the State Land Use Commission (LUC).
2. The existing dwelling, water tank, and related site improvements were constructed under a building permit (B No. 911843) issued by the Department of Public Works (DPW), Building Division in Hilo. B No. 911843 was opened on September 4, 1991, and closed on February 6, 1992, by the DPW.
3. The site plan drawing, drawn to scale and dated June 1, 1997, by The Independent Hawaii Surveyors, identifies the dwelling's water tank's existing and proposed water tank location. The site plan accurately denotes the minimum building setbacks required for the subject property.
4. To date, it appears only one (1) building permit (B No. 911843) was issued to construct and establish the existing dwelling, water tank, and related building improvements situated on the subject parcel. Subsequent to the issuance of the building permits, it appears the electrical permits and plumbing permits were also obtained from the DPW, Building Division. The required building inspections by the effected government agencies of the new dwelling and related site improvements occurred during the building permit. Building permit no. 911843 was completed or closed by the DPW, Building Division on February 6, 1992.
5. It appears the original site plan 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 on State land and within the property's minimum rear yard and open space requirements went undetected by the County, other government agencies, and the public. It appears the existing parcel was affected by the existing Volcano Road realignment and other State roadway improvements.
7. The Department of Public Works memorandum dated July 31, 1997 in the variance file states in part:

- "1. Building shall conform to all requirements of code and statutes pertaining to building construction. The minimum setbacks for residential structures shall be 3-ft. for the side and rear. The relocated water tank shall not block any required doors or windows.
2. The Hawaii Belt Highway, along the south-eastern boundary of the subject property, is owned and maintained by the HDOT. Comments and requirements concerning this road should be directed to the HDOT.
3. The Old Volcano Road, along the north-western boundary of the subject, is a County maintained roadway."

8. The Department of Finance-Real Property Tax memorandum dated July 29, 1997, in variance file states in part:

"Real Property taxes are paid through June 30, 1997."

9. The following verbatim statements are from the applicant's reason(s) attached to the variance application:

"I am requesting a variance to move the present water tank into the setback area in back of the existing house. The water tank does encroach the (sic) rear boundary and onto State of Hawaii property, as described in the attached map showing the existing conditions upon Lot 66-A.

Presently, my financial condition is very negative and we, my wife and I, have decided to sell the property. We have found a buyer that is ready to close the sale.

However, the Land Surveyor did find this discrepancy, which we were not aware of. The buyers will close the sale pending approval of this variance since they want the water tank in back of the house and in compliance (off of State of Hawaii property, and the approval of this variance).

In the map showing proposed conditions upon Lot 66-A, the water tank will be moved off of the State of Hawaii property and onto the rear of the house in (sic) the setback area, should this variance be approved."

10. No objections to the variance application were received from the surrounding property owners.

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The present owner/applicant submitted a site plan which identifies the location of an existing dwelling and water tank. The site plan submitted identifies the distances between the wall of the dwelling from the side and rear boundary lines. The existing water tank was constructed and straddles on one of the property's four boundary lines.

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building 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.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owner/applicant. 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 and water tank 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 or water tank would be economically unreasonable and may disrupt other existing site improvements.

The current owner or applicant, on his own volition, is honestly trying to resolve a recent building encroachment problem. No evidence has been found to show indifference or premeditation by the current owner or applicant to deliberately or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the owner/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 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, water tank 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 original building permit did not

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disclose any water tank setback irregularities. The current owner or applicant felt all Zoning Code and building permit requirements had been observed, satisfied, and met.

The circumstances which permitted the water tank to be built on the non-conforming sized property are unique. The existing building encroachments have been built on the property's rear boundary line and upon the adjacent property. The existing building encroachments on the common boundary line and into the property's respective rear yards are not physically and visually obtrusive from the existing road rights-of-way. The building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. It appears, the existing water tank building's "footprint" and building encroachments built and established recently within the property's rear yard have not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the proposed water tank relocation and existing building encroachments will not detract from the character of the immediate neighborhood or the subdivision. It appears the existing building encroachments on the adjacent property, on the affected boundary line, and within the property's rear yard were created and induced by a cumulation of mapping discrepancies and interpretation of the minimum yards during building permit review. Inspection of the property during the life of the building permit by government agencies did not discover any building encroachment or disclose any irregular water tank building setback problems. The existing water tank will not be considered a "living area" because it may be attached to or is near the existing single story dwelling situated on the property.

The subject variance application was deemed complete on June 17, 1997. Pursuant to a September 7, 1997, discussion with the applicant, 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. 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/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner have identified and acknowledged the subject dwelling's water tank encroachments and residential use were built and established within

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the rear yards and open space of the subject property. A portion of the existing dwelling/water tank on the subject tax map key property established in 1992 does not comply with the minimum rear yard and permitted projection requirements prescribed by the Chapter 25, Zoning dated December 7, 1996. 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.

3. The proposed tank relocation within the rear yard does not meet Chapter 25, the Zoning Code's, minimum rear yard and related permitted projections into yards and open space requirements. The approval of this variance allows the existing water tank to be relocated on and within 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 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:pak
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xc: Real Property Tax Office