

CERTIFIED MAIL

September 9, 1982

Mr. Clarence Robarge  
15-150 Puni Paka Street East  
Pahoa, Hawaii 96778

Dear Mr. Robarge:

Variance Application (V82-30)  
Minimum Rear Yard Setback and Clearspace Requirement  
Tax Map Key 1-4-69:28

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow a ten (10) feet rear yard setback and eight (8) feet - three (3) inch clearspace yard in lieu of the minimum fifteen (15) feet and a ten (10) feet clearspace requirement in Kapoho, Puna, Hawaii.

The approval is based on the following:

1. That there are special and unusual circumstances which apply to the subject property which exists to a degree that deprives the applicant of substantial property rights that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property.

The subject property which consists of 8,003 square feet is situated within the Kapoho Vacation Land Subdivision. Because of its proximity to the coastline, the topography and the geological makeup of the land, the property and other properties in this area are affected in terms of their relationship to the the ocean, by subsurface and surface type tide pools. However, all lots in this subdivision do not have surface type of tidepools.

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Thus, in this particular situation, the location of a tide pool on the property is considered to be a special and unusual circumstance as it has a direct affect on the net buildable area of the subject property. The area of the tide pool on the property is approximately 2,084 square feet in size, which is approximately 26 percent of the subject land area. However, because of the location of the tide pool in the front and middle portions of the property and the land area it takes away from the net buildable area, the only buildable area remaining is to the rear of the property. This net buildable area is approximately 1,813 square feet or 23 percent of the land area after the application of the required setbacks. This is approximately 28 percent less than what would have been available to the applicant, if no surface type tide pool was on the property. In a normal situation, the net buildable area would be 4,064 square feet or 51 percent of the land area.

Therefore, these are special circumstances which deprives the applicant of substantial property rights which would otherwise be available and also is to a degree which obviously interferes with the best manner or use of development of the subject site.

2. That there are no other reasonable alternatives to resolve the difficulty.

The unique front and central location of the tide pool on the property consumes approximately 4,756 square feet or 59 percent of the subject property. Thus, only 3,247 square feet or 41 percent of land area remains for the design and development for any structural considerations. This 41 percent also includes the area in which the Zoning Code's setback requirements must be imposed. The non-buildable area of 59 percent forces the applicant to utilize only the rear portion of the property for his single family dwelling. This approximate area of 1,813 square feet does not give the applicant reasonable flexibility in developing design alternatives for the development of the subject site. As such, he is confined to a minimum amount of alternatives in which to develop the property. Thus, because of the recommendation by the Corps of Engineers to move the building five (5) feet further to the rear and the sites orientation for view purposes, the selection of the proposed design is the only reasonable alternative for the applicant.

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Additionally, because of these considerations, any other design solutions which would have to adhere to the minimum Zoning Code setback requirements would be unreasonable and foreclose any options in developing the property for the proposed single family dwelling use.

The proposed design provides for a ten (10) foot rear yard setback which is determined to be reasonable in light of the constraints and circumstances being applied to the property. Any other design alternatives in resolving this issue would not only be putting excessive demands upon the applicant, when a more reasonable solution is available.

3. The granting of the variance shall be consistent with the general purpose of the Zoning District, the intent and purpose of the Zoning Code and the General Plan. The intent and purpose of the setback requirements is to ensure that adequate light, air and circulatory functions are available between structural developments and properties. In this particular application, the design solution will still provide for these functions, although it would not meet the minimum required setbacks imposed by the Zoning Code. The proposed design would still employ and afford the air, light, and circulatory functions that is the basis of requiring setbacks. Therefore, the analysis of these issues has also concurred that the granting of the variance would not be considered to be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the area's character or to adjoining properties.

The variance request is approved, subject to the following conditions:

1. That the petitioner or authorized representative be responsible for complying with all the stated conditions of approval.
2. That a "Building Permit" be secured for the proposed single family dwelling within one (1) year from the effective date of approval of the Variance and be completed within two (2) years thereafter.
3. That the Department of Public Works and State Department of Health requirements be complied with.

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4. That the ten (10) foot rear yard setback be staked out prior to construction and that the Planning Department be notified prior to construction, to verify the staking of the ten (10) foot rear yard setback.
5. That no construction activity shall take place within the tide pool, however, construction activity may occur up to the edge of the tide pool, as recommended by the Corps of Engineers.
6. That all other applicable State and County rules, regulations, and requirements be complied with.

Should any of the foregoing conditions not be met, the Variance Permit shall be deemed void.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. FUCE  
Planning Director

RHY:lgv

cc: Planning Commission