

CERTIFIED MAIL

February 14, 1984

Mr. Roy A. Forbes
1408 Kilikina St.
Hilo, HI 96720

Dear Mr. Forbes:

Variance Application (V84-2)
Variance From Minimum Allowable Open Projection Requirements
Tax Map Key 2-5-59:3

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

Special and Unusual Circumstances

This single-family residential subdivision was approved by the County in 1977. In May of 1982, building permits were issued for a guest house and a new single-family dwelling to be constructed on the subject property. The approved plot plan indicated that the proposed dwelling, including the open lanai deck, would be sited approximately 21 feet from the west side property line and 15 feet from the east side property line. In the month of December 1983, the petitioner was informed by the Department of Public Works' Building Inspector that there was a discrepancy between the setback distances on the site plan and the actual siting of the dwelling on the property. To correct the construction error, the petitioner submitted the variance application. The petitioner claims in his application that he relied upon past information given to him by the County to resite the proposed dwelling. He indicates that he did not realize that the roof overhang could not extend into the open clear-space yard. There is no evidence of what actually had transpired in 1968 between the petitioner and the County, as there are no plans available, nor is there any documentation to indicate that the petitioner was given erroneous information concerning

FEB 15 1984

Mr. Roy A. Forbes
Page 2
February 14, 1984

setback requirements. Furthermore, one cannot necessarily apply the same standards for Honokaa or anywhere else as setbacks will vary according to the zoning, lot size, lot orientation to streets, etc.

The subject property is relatively level and is a typical 15,000-square foot lot for this single-family residential zone district. There are no special or unusual circumstances relative to the property which would have required the petitioner to make the site development changes. The petitioner could have constructed the dwelling, including the open lanai deck addition, according to the approved site plan.

Based on the foregoing, we have concluded that there are no special and unusual circumstances which unreasonably interferes with the best use or manner of development of the property.

ALTERNATIVES

The petitioner did have other design alternatives. However, when the petitioner made the change in resiting the dwelling on the property, he negated those alternatives. As such, because of the extent of construction, there are no other design alternatives. The resiting alternative would require removal and reconstruction of the open lanai deck.

The design of the dwelling is also traditional in the sense that it is a typical two-story, single-family dwelling. There is nothing in the design of the dwelling which makes it unique or unusual that would necessitate its deviation from the minimum setback requirements of the Zoning Code. More importantly, the petitioner decided on his own to make the resiting change without consulting with the County Planning Department. The use of the variance procedure to resolve a self-imposed difficulty in an relatively developed and residentially zoned area without any special or unusual circumstances is also unreasonable. It should be pointed out that other landowners in the Ainako Terrace Subdivision have been able to develop their properties within the limitations imposed by the Zoning Code. Moreover, the question of reasonableness has to be viewed in terms of the relationship of the three criteria for the granting of a variance and not solely on the reasonableness of the alternative in trying to resolve the difficulty. Thus, although from the petitioner's standpoint the alternative test may seem to validate the approval of the variance, the circumstances and intent and purpose tests do not. Although the petitioner's claim that the removal of the roof overhang is not a viable option for him, it seems to be the most reasonable in view of circumstances for this

Mr. Roy A. Forbes
Page 3
February 14, 1984

situation. Another possible alternative for the petitioner is for the reduction of the open lanai deck area from 10 feet to 7 feet and reconstruction of the post line 8 feet from the east side property line. Although this may not be viewed as a reasonable alternative by the petitioner, it is viewed as a viable one in terms of all other alternatives that could resolve the petitioner's difficulties.

INTENT AND PURPOSES

The intent and purpose of the setback requirements is to ensure that air, light, physical and visual circulatory functions are available between structural developments and property lines. It is a regulatory tool which is also used in determining design compatibility and functional solutions. In this particular application, the design solution did provide more than the minimum area for these functions. When the petitioner decided to resite the dwelling, the air, light and circulatory functions between the subject property and the adjacent property to the east were diminished. This was a personal decision by the petitioner without fully realizing the impact of it on the adjacent property. Thus, all things being equal, an approval of a setback variance without any special or unusual circumstances related to the land would also not be in keeping with the area's character and could be of some detriment to the adjoining properties.

The setback areas are for the benefit of all of the landowners of the subdivision and not for the purpose of increasing personal property development rights. The use of the variance procedure to enhance a property's development rights would violate the original intent of the setback concept and thus may have a detrimental or adverse effect on the adjoining or surrounding properties.

This variance request is viewed to be inconsistent with the general purpose of the Zoning District and the intent and purpose of the General Plan. Furthermore, the granting of the variance without any substantiation of proof in conjunction with the criteria test for variances would be setting precedence for the rest of the subdivision to request for the same type of relief from these standards.

Finally, while it could be construed that the impact of allowing the variance to the petitioner may be minimal, the impact to the adjacent property and the cumulative impact of subsequent similar variances without legitimate hardships cannot be ignored. This consequence, in this instance, must be given a higher priority and must override the personal wishes or desires of the individual in

Mr. Roy A. Forbes
Page 4
February 14, 1984

favor of the intent and purposes of the Zoning Code and the welfare of the general public.

Based on the foregoing, the Planning Director further concludes that the variance application should be denied.

In accordance with the denial decision, the petitioner shall remove or reconstruct the open lanai deck portion of the dwelling to comply with the maximum allowable open type projection requirements as stipulated by the Zoning Code prior to the final inspection approval by the Department of Public Works.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100.00); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

Mr. Roy A. Forbes
Page 5
February 14, 1984

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions on this matter, please feel free to contact our office at 961-8288.

Sincerely,



SIDNEY M. FUKU
Planning Director

RHY:emf

cc: Planning Commission (w/encs.)
Corporation Counsel (w/encs.)
Chief Engineer, Dept. of Public Works
Attn: Antone Nagareda (w/encs.)

Encs.: Background & Recommendations