

CERTIFIED MAIL

April 17, 1985

Mr. Robert Medeiros
P. O. Box 173
Papaikou, Hawaii 96781

Dear Mr. Medeiros:

Variance Application (V85-4)
Variance from the Minimum Sideyard Setback Requirements
Tax Map Key 2-7-29:18

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 the construction of a one story patio addition to an existing single family dwelling with a sideyard setback of 5 feet-5 inches in lieu of the minimum 8-foot sideyard setback as required in the Single Family Residential (RS-7.5) zoned district in the Anderton Camp (Mauka) subdivision in Papaikou, South Hilo, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is situated within the County's Single Family Residential 7,500 (RS-7.5) zone district.
2. The subject property is situated within the Anderton Camp (Mauka) subdivision which was created in the 1940's.
3. The subject two story dwelling was constructed in the 1940's with a 10 feet-6 inch front yard setback and 5 feet-5 inch side yard setback. The one story garage is attached to the west side of the dwelling. The proposed patio addition will follow the same building line as the existing garage.
4. The subject property consists of 10,143 square feet, which exceeds the minimum lot size requirement for this zone district.

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5. The subject property is 68.70 feet in width and with the minimum 8-foot sideyard setback would allow a building envelope of 52.70 feet between side property lines.

6. The existing wall of the dwelling in the back of the garage where the proposed patio addition is to be constructed is approximately 25 feet-5 inches from the west side property line.

7. There is a topographical difference of approximately 2 feet between the garage floor and the proposed patio addition floor.

8. The dwelling on the adjacent property to the west of the subject property is located at the north end of the property. Thus, there is approximately 80 plus feet between the two structures. The adjacent property to the west is vacant and overgrown with vegetation in the area of the proposed patio addition.

9. There are two existing storage structures approximately 10 feet from the rear of the existing dwelling.

10. At the rear of the dwelling, the structure is two stories in height with a rear stairway to the second story. The height of the dwelling at the rear is approximately 20 feet.

11. There is approximately a 2-foot topographical difference between the existing garage floor and the proposed patio addition. There is also an approximate 2-foot high bank on the west side property line, which requires that the patio addition area be excavated and retained by a hollow tile wall.

Based on these facts, we have concluded that there are special circumstances related to the subject property that exists to a degree which deprives the owner 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 that property.

ALTERNATIVES

The petitioner has limited alternatives available in constructing the proposed patio addition without the necessity of a setback variance.

1. The proposed open patio addition is designed such that it would meet with the Zoning Code's minimum setback requirements for open type structural projections except for the bathroom wall area.

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2. The proposed bathroom wall, which is approximately 3 feet in width, has to be located in this area in order to provide for the stairway access from the garage floor level.

3. The design of the existing dwelling, the two story height at the rear of the dwelling, the one story design of the existing garage, and the topographical conditions limit the petitioners ability to design a patio addition which can be reasonably attached to the dwelling.

4. A detached patio addition would not be a reasonable alternative as it would have to be located to the rear of the existing storage sheds and would lose its functional relationship with the existing dwelling.

In the review of variance applications of this nature, the question of reasonableness has to be viewed against all the established criteria for the granting of a variance and not solely on the reasonableness of the alternatives in trying to resolve the difficulty.

In the evaluation of this application, it was found that the imposition of the Zoning Code's minimum 8-foot sideyard setback for the patio addition would be excessive in light of the circumstances surrounding this request. The only area which is required to comply with the 8-foot setback is the 3-foot wide bathroom wall and its design is required because of the topographical and existing structural limitations.

INTENT AND PURPOSES

The basic purpose of the setback concept is to ensure light, air and physical circulation between structural developments as well as for social and aesthetical considerations.

5. This property is situated within the Anderton Camp (mauka) subdivision which consists of approximately 63 lots in the RS-7.5 zone district. Lots in this subdivision range from 4,500 to 12,000 square feet in size.

6. The dwelling on the adjacent property to the west is situated at the front of the property which is approximately 80 plus feet from the proposed patio addition.

7. The Zoning Code would permit the open patio addition if it were not for the bathroom wall which is 3 feet in width.

8. There are special topographical and structural conditions present on the property which warrants the imposition of a lesser setback for the bathroom portion of the addition.

9. The topographical difference and the design of the existing dwelling do not make it feasible or reasonable to locate it elsewhere on the property.

10. The proposed bathroom wall, which is approximately 3 feet in width, is not an active living space and will not infringe upon the adjacent property's air, light and physical circulation requirements because of the minor scope of the proposed addition.

As such, the special topographical and design circumstances and the lack of reasonable alternatives in this instance further supports the approval of the variance request. Since the facts demonstrate that the variance should be approved, the granting of this variance request would be not be inconsistent with the general purpose of zoning district, the intent and purpose of the Zoning Code and the County General Plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to the area's character and to the adjoining properties.

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

- A. The petitioner, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
- B. The plans for the proposed open patio addition with a 5 foot-5 inch sideyard setback shall be submitted for Plan Approval within one year from the effective date of approval of this Variance Permit.
- C. The construction of the proposed improvements shall commence within one year from the effective date of final Plan Approval and be completed within two years thereafter.
- D. All other applicable State and County rules and regulations shall be complied with.

Should any of the above conditions not be complied with, the variance shall automatically be deemed void.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

RHY:wkm

Encl.

cc: Planning Commission