

CERTIFIED MAIL

June 26, 1986

Mr. Mel D. Macy
73-4329 Pa'ani Place
Kailua-Kona, HI 96740

Dear Mr. Macy:

Variance Application (V86-21)
Mel D. Macy
Tax Map Key 7-3-31:39 Lot 125

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 swimming pool within the 20-foot front yard setback area with a clearspace of 5'-0" in lieu of the minimum 14'-0" clearspace requirement as required in the Unplanned zoned district. The subject property which consists of 11,977 square feet and identified by TMK: 7-3-31:39, is located on the east (mauka) side of Pa'ani Place approximately 95 feet north of the Ka'iminani Drive-Pa'ani Place intersection, Kona Palisades, Unit I, Kalaoa 5th, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property. Along the other side, there is the existing driveway to the garage that is located along one side of the dwelling. Due to the location of the existing dwelling, driveway, topography and the irregular shape of the property, the only available area to construct the swimming pool is within the front property line setback area.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property

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which exists to a degree which deprives the owner of substantial property rights which would otherwise be available or unreasonably interferes with the best use of the property.

ALTERNATIVES

There are no reasonable design alternatives. The swimming pool could be constructed in the rear of the existing dwelling with modifications to the present design. However, this alternative would require the mass excavation (grading) of the existing ground of approximately 8-foot in depth to bring it to the grade level of the existing dwelling. Further, due to the location of the existing dwelling and topography of the property, it would be impossible to bring in the heavy equipment onto the property without going over property owned by others.

The other alternative would be to construct the swimming pool next to the deck and columns that support the roof beams and roof. However, this alternative is not advisable since the pool will be located next to the column that is supporting the roof structure. During construction, if care is not taken the existing may suffer structural damage if this alternative is used.

Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application of these alternatives have to be evaluated with respect to the land characteristics and its present usage. In this particular case, the imposition of the other alternatives is considered to be excessive when a more reasonable solution is available.

INTENT AND PURPOSE

The intent and purpose of the setback requirement is to ensure that light, air, physical and visual circulatory functions are available between the proposed swimming pool and the area around it. It is a regulatory tool which is also used in determining design compatibility and functional solutions. In this particular application, the proposed solution will still provide a reasonable area for these functions, although it would not meet the minimum requirements imposed by the Zoning Code. The proposed swimming pool is to be constructed with the deck being almost at the same grade as the finish grade surrounding it. The pool will not interfere with the sight, air, physical, and visual circulatory function.

Consequently, we have determined that 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

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Plan. The analysis of the above issues also has concurred that the granting of the variance will not 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:

- A. The petitioner, its successors or assigns shall be responsible for complying with all stated conditions of approval.
- B. Plans shall be submitted for Building permit approval within one year of the date of this variance approval and be completed within two years of the date of issuance of the Building permit.
- C. All other applicable rules, regulations and requirements, including those of the Department of Public Works and the State Department of Health, shall be complied with.
- D. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agent under this variance permit or relating to or connected with the granting of this variance permit.

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

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO:lkt

cc: Building Division
Colbert Nozaki