

CERTIFIED MAIL

February 25, 1987

Mr. Lynn H. Hawkins
P. O. Box 3343 WVS
~~Kapaaui, HI 96755~~ *Kamuela, HI 96743 3/2/87*

Dear Mr. Hawkins:

Variance Application (V86-35)
Lynn H. Hawkins
Tax Map Key 6-8-06:11

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 single family dwelling with a rear yard of 5'-0" in lieu of the minimum 20'-0" requirement within the Single Family Residential (RS-10) zoned district. The subject property which consists of 12,235 square feet and identified by TMK: 6-8-06:11, is located on the northeast side of Kaupapa Way approximately 100 feet west of the West Kaupapa Place/Kaupapa Way intersection, Waikoloa Village Unit 1-B, Waikoloa, South Kohala, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

That there are special and unusual circumstances applying to the subject property which deprives the petitioner of substantial property rights that would otherwise be available or interfere with the best use or manner of development of the property.

Although there is adequate land area (12,235 sq. ft.) to construct a dwelling on the property, approximately 7,000 square feet of it is located on the lands with an average slope of approximately 36 percent or greater. Further, due to the

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sloping conditions of the land, the Department of Health recommends that the cesspool be located as far away as possible from the slopes to prevent lateral seepage. This further limits the available area for the construction of the proposed dwelling. The cesspool must be located a minimum of 9 feet from property lines and 10 feet from the wall line of any roofed structure.

The property could be graded to create a buildable area. This would involve an area of approximately 6,300 square feet which would have to be graded down 7 feet from its present level. The total number of cubic yards that would be excavated is approximately 1,600 cubic yards.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exists to a degree which deprives the owner of substantial property rights that would otherwise be available or which unreasonably interferes with the best use or manner of development of the property.

ALTERNATIVES

There are no reasonable design alternatives. The first alternative would be to grade the property to create a larger buildable area. This alternative would result in the excavation of approximately 1,600 cubic yards of material. The second alternative would be to revise the house plan which would reduce the floor area below 2,000 square feet which includes the area of a 2 car garage (20' x 20' = 400 sq. ft.) If the property did not have the unusual topographical conditions (severe slope), the proposed dwelling would have had any difficulty in meeting with all of the setback requirements. As such, the proposed design scheme with a 10 foot rear yard setback for a portion of the dwelling would be a reasonable alternative in light of the topographical constraints of the property. 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 dwelling and the rear property line. 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 20 foot rear yard setback requirements imposed by the Zoning Code. If the rear yard was considered as the side yard, that portion within the 20-foot setback area would meet with the 10-foot side yard setback requirement.

In this particular application, by establishing an accurate common rear yard boundary line between the subject parcel and the adjoining parcels to the north (parcels 3 and 4), any future construction will require a minimum 20-foot rear yard setback and may ultimately result in a minimum distance of 30 feet between building walls. Further, due to the topographical elevation difference between these parcels and the subject parcel, the distance between building walls would result in a distance in excess of 30 feet. Therefore, while the proposed dwelling would not meet the minimum rear yard setback requirement as stipulated by the Zoning Code, it is felt that in this instance, that adequate air, light, and circulatory functions will still be provided for.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and adjoining properties.

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

1. The petitioner, its assign or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction within the rear yard setback area shall be limited to only one corner of the dwelling.

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3. A building permit for the dwelling must be secured within one year of the effective date of the variance and shall be completed within two years thereafter.
4. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the variance shall be deemed null and void.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO:dh

cc: Building Division
Waikoloa Village Association