

CERTIFIED MAIL

September 14, 1989

Mr. Daniel M. Stueber
75-5837 Kuakini Highway, Apt. D-2
Kailua-Kona, HI 96740

Dear Mr. Stueber:

Variance Application (V89-2)
Tax Map Key 7-7-20:35

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 permit a swimming pool, currently under construction, to project 9.7 to 12.78 feet into the front yard setback and having a 7.22 to 10.30 feet clear space setback from the property line in lieu of the allowed 6 feet projection with required 14 feet clear space as imposed within the required minimum 20 feet front yard setback. The subject property is 10,000 square feet in area, identified by tax map key 7-7-20:35 and is located along Walua Road, approximately 90 feet from its intersection with Wikolia Street, Kalani Sunset Subdivision, Holualoa 3rd, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances which apply to the subject property which exist to a degree which 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 applicant interpreted the 6 feet projection as being a measurement projecting from the property line to the pool wall rather than from the minimum setback requirement toward the property line. As such, the applicant reflected the stated measurements on his construction plans.

A building permit/construction plans were approved and subsequently a building permit was issued for the construction of the proposed swimming pool. The applicant

SEP 14 1989

Mr. Daniel Stueber
Page 2
September 14, 1989

completed excavation and all other construction preparation necessary for the gunite shell. Only at this stage of construction did the applicant realize that the swimming pool appeared too close to the front property line and therefore, may not be within the required setback.

It has been determined that the Planning Department, to a degree, may have contributed to the error. Although a notation on the building permit application indicated that the pool can project into the front yard setback by 6 feet, there were no corrections nor notations made on the construction plans to clearly indicate the allowable projection and/or required 14 feet clear space setback as imposed by the Zoning Code.

The applicant recognizes the importance of setback distances and realizes that the resultant error is his responsibility. Nevertheless, the denial of the variance to retain the siting of the proposed swimming pool with a 7.22 to 10.30 feet clear space would impose an undue economic as well as a design hardship on the applicant.

ALTERNATIVES

There are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the partially constructed swimming pool to comply with the required 14 feet clear space setback requirement would be an unreasonable and burdensome solution to the applicant. The action taken by the applicant to legitimize the structure is one which is being done of his own accord.

However, the proposed swimming pool being too close to Walua Road than permitted poses a possible future problem should Walua Road be improved and widened. Therefore, this situation would be mitigated in favor of the County by a condition imposed further in this variance approval, whereby the owner has stated his willingness to absolve the County of any responsibility should his swimming pool be damaged by any road construction work involved in the improvement or maintenance of Walua Road. Further, that any future land acquisition for road widening be assessed as unimproved land which excludes the pool.

In conjunction with the ground level swimming pool, the applicant will be constructing a terraced lava rock wall along the front property line. The rock wall will be 3 feet above the pool deck, thereby reducing the visibility of the pool from the roadway.

In view of the foregoing, any other alternatives in resolving this situation would be putting excessive demands upon the applicant when a more reasonable solution is available.

INTENT AND PURPOSE

The granting of the variance is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan. The intent and purpose of the setback requirements are to ensure that sufficient light, air, circulation, and visual and spatial considerations are available between structures and property lines. In this particular request, the location of this proposed swimming pool will still provide for these functions, although it would not meet the required 14 feet clear space setback from the front property line as required by the Zoning Code. The encroachment is along Walua Road which has a right-of-way of 45+ feet. However, the subject property has a sloping terrain and is approximately 10 feet above the road. Thus, the existing location would not impact any adjoining properties and at the same time would still employ and afford the air, light and circulatory functions that is the basis of requiring setbacks.

In view of the above elements, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character or to adjoining properties.

The Planning Director has concluded that this variance request be approved, subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Because of the close proximity of the pool to Walua Road, the owner shall:
 - a) Absolve the County of any responsibility for any damage to the pool occurring from any adjacent public improvements, repair or maintenance of Walua Road. Acceptance of this variance shall be considered as the owner's immediate acceptance of this condition.

Mr. Daniel Stueber
Page 4
September 14, 1989

- b) Should the County require additional land for Walua Road widening, the owner shall agree that any land acquisition by the County of the subject property shall be based on unimproved land price assessment which would not include the swimming pool improvements.
- c) Within 90 days of receipt of this variance, the owner shall submit to the County for its review a written provision encompassing these two conditions (a and b) to be included in the deed to this property, to run with the land for as long as the pool remains in this location. Upon acceptance of the provision by the County, the owner shall at his own cost, promptly have the document recorded as part of the deed at the Bureau of Conveyances and submit a copy of the recorded document to this department.

3. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Director may proceed with declaring this variance null and void.

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

Sincerely,


DUANE KANUHA
Planning Director

DT/AK:lv

cc: DPW-Building Division
DPW-Engineering Division
West Hawaii Planning Coordinator