

CERTIFIED MAIL

March 8, 1989

Ms. Eiko Smith
Rt. 2 Box 633
Garfield, Arkansas 72732

Dear Ms. Smith:

Variance Application (V88-33)
Variance from Rear Yard Setback Requirement
Tax Map Key 7-3-31:13

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

There are not found to be special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The subject land is typical of that area with 10,000 sq. ft. lots--moderately steep slopes, rocky soil, generally similar to the entire Kona Wonderview and Kona Palisades Subdivisions of which it is a part, developed in the early 1970's.

The original building permit for the dwelling, issued in 1981 to James Smith (Eiko Smith's husband) was for a 2-story residence of 1944 sq. ft. plus a 400 sq. ft. carport. No other permits were issued for that parcel of land since then, according to the County's Building Division records.

Had the applicant applied for a building permit for the deck and spa, the proper setbacks would have been specifically

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made known, and code complying alternatives would have been suggested if requested. However, this did not transpire because the owner chose to ignore, and the contractor chose to bypass the building permit process. Although the unlicensed contractor may have handled the details of planning, siting and building the addition, the owner in this case must also bear the prime responsibility for compliance with all of the building permit requirements.

The owner was aware of the need for a building permit in 1981 as he initiated and signed the permit application for the dwelling on this parcel. The contractor for the subsequent deck and pool improvements was unlicensed but was known to have built a number of pools and decks in Kona between 1984-86 according to the State Dept. of Commerce and Consumer Affairs (Kona Office).

The County Zoning Code containing the setback standards and the building permit requirements of the county were applicable to all construction since 1968, some 20 years ago.

The dwelling is sited such that there is adequate available land to the west for building expansion. The original dwelling was placed 30 ft. from the south boundary and an angled 35 ft. to 60+ ft. from the west boundary. This area affords adequate space for a deck and spa tub while still maintaining the view of the coastline and ocean to the west.

ALTERNATIVES

There were reasonable alternatives available to the owner. There is still adequate building space to the west to build a 20 ft. x 30 ft. or larger pool/spa and still meet Zoning Code standards and maintain the view of the ocean. By relocating the cesspool, an even larger structure becomes possible toward the southwest which is the viewpoint.

If the deck were to be structurally removed or separated from the dwelling, it could be considered an accessory structure which would need no rear yard setback, except for compliance with the Housing Code's 5 ft. setback requirement from the south property line. This alternative would at least permit most of the deck to remain, including the spa-tub.

INTENT AND PURPOSE

The intent and purpose of the Zoning Code's setback requirement is to provide adequate open space, light, air circulation, and privacy between buildings and properties in a scale appropriate to and commensurate with the locale, the zoning district and expectations of the neighborhood.

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In neighborhoods or zones with 10,000 to 15,000 sq. ft. lots, the standards are 20 ft. front and rear setbacks and 10 ft. side setbacks with allowable projections of 6 and 5 ft., respectively.

In this particular situation, the deck extends 18 ft. into the 20 ft. setback. Since the code allows 6 ft. "open" type projection into the setback, the structure illegally encroaches 12 ft. into the setback area.

The mutual setback required of adjacent properties also affords neighbors the requisite privacy and space from each other. In this case, the elevated deck ends about 20 inches from the property line where it should be 12+ ft.

The approval of this variance may therefore adversely impact surrounding property by reducing the separation between buildings to only the setback area imposed on the property to the south.

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); and
2. Ten 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 days from the date of receipt of a properly filed appeal. Within sixty 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.

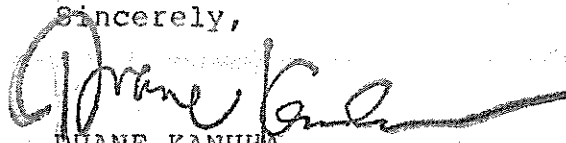
All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with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

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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, please feel free to contact us.

Sincerely,



DUANE KANUHA
Planning Director

DT:lv
Enclosure - Background Report
cc: Planning Commission w/enc.