

CERTIFIED MAIL

September 27, 1989

Dr. Philip R. Foti, M.D.
- Mr. Nicholas K. Denzer
1343 Mokulua Drive
Kailua, Oahu, HI 96734

Dear Dr. Foti and Mr. Denzer:

Variance Application (V89-19)
Variance from Side Yard Setback Requirements
Tax Map Key 8-2-03:33

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 an existing roof eave to remain extending 13.1 feet into the side yard setback area where the clearspace requirement allows five (5) feet. The subject property is .77 acres in area, identified by tax map key 8-2-03:33 and is located on the west side of Government Road, 550 feet west of its intersection with Beach Road within a portion of Kiloa in Waipunaula, South Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the applicants of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

While constructing his residence, the applicants sited the dwelling based on existing boundary stakes pointed out to them by the neighbor to the northwest. During construction, however, it was found that the building was closer to the boundary than originally thought. The circumstances indicate that the boundary pins had been moved, and this is described by the surveyor, Don McIntosh, in a letter dated July 28, 1989, addressing this situation.

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Furthermore, the subject property's affected side boundary borders the pole of an adjacent flaglot where the pole portion is 55 ft. wide. That width renders the pole unbuildable, precluding the possibility of the subject residence's proximity to that boundary being an irritant to a neighboring residence. The flag lot's full-size is 5.13 acres; the pole portion is about 200 ft. long.

Although the subject lot is in an Unplanned zone where a 5 acre minimum lot size is the minimum, it was created in July 1989, by a consolidation/resubdivision action of the Roman Catholic Church property adjacent to the north, thus its .77 acre size retains setback distances of 15 ft. for its side yards rather than the 20 ft. for full-sized lots in Unplanned designated areas.

The walls of the building comply with the required setbacks and it is the balcony and roof projections which are excessive.

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

ALTERNATIVES

There are few alternatives to resolving this situation. One would be to trim off the edge of the roof, but it would also mean removing a major portion of the balcony surrounding the dwelling. Moving the dwelling is considered unreasonable when compared with the extent of the code violation. Obtaining an easement or acquiring a portion of the adjacent property would not be practical as the pole of that lot is that owner's access, and relationships between the two are strained, according to the applicant.

INTENT AND PURPOSE

The intent and purpose of the setback regulations is to allow a degree of open space, light, air, and related spatial considerations between buildings on adjacent properties and between vacant properties as well. In this particular case, the property nearest and adjacent to the building in question is 55 ft. wide and is the pole of a flaglot. Its relative narrowness precludes a dwelling being

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constructed on it; its use is thus restricted to remaining a vehicular access rather permanently. Therefore, the encroachment of the subject building's roof and balcony will not, in this case, negatively affect any dwellings or uses involving structures. The net result is that the applicant's dwelling, although about 2 ft. only from the southeast boundary should have no deleterious effect on this adjacent property. The neighbor who could have been affected, furthermore, has not objected to the variance request.

Also, the existence of the 55 ft. wide "pole" does in fact serve as an additional buffer or open area, presenting even more open space even though it is not the applicant's property.

In view of these factors, the variance request is considered reasonable and warranted by the elements in this case.

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 area's character and adjoining properties.

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

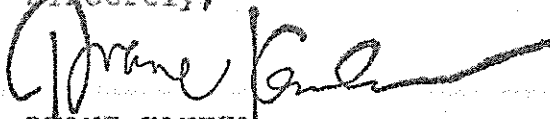
1. The applicants, their assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No other construction shall be permitted within the excepted south boundary side yard besides the subject roof and balcony projection.
3. No individual wastewater system or wastewater treatment works and appurtenances shall be constructed in the identified drainage easements.
4. 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 to declare this variance null and void.

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

Sincerely,



DUANE KANUHA
Planning Director

DT:lv

cc: West Hawaii Planning Coordinator