

CERTIFIED MAIL

November 1, 1989

Ms. Audrey Kaneshiro
P.O. Box 881
Volcano, HI 96785

Dear Ms. Kaneshiro:

Variance Application (V89-21)
Side Yard Setback Requirements
Tax Map Key 9-9-9:13

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 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 applicant was the owner-builder of the dwelling and accessory structures and was responsible for the proper siting of all construction, as well as their building standards. Plans for the building permit to construct the water tank clearly indicates "Min. 10' Side Yard Setback Required". Despite the obvious notation on the site plan, the water tank was not located in accordance with the approved plans.

The ground is fairly level and there are no topographical circumstances which would preclude code conforming setbacks for the structure. Adequate space is available in front of the existing dwelling or to the rear of the carport for the emplacement of the tank.

ALTERNATIVES

There are alternatives to the situation because there is more than sufficient land available on the lot to accommodate the tank while meeting the minimum 10 feet side

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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.

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

AK:lv
Enc.: Background Report
cc: Planning Commission (w/enc.)

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yard requirements. It would not affect the house's view of the mountain as the view plane is directly west and the tank could be moved into the ample front yard area. Although the applicant's site plan shows a front building setback distance of 64 feet (code minimum requirement for the front yard is 20 feet), the field inspection showed it to be closer at 75 feet. There is also sufficient land to the north or rear yard since accessory structures, in this case, can go to the rear without a setback distance if they are not structurally attached to the main building. Having dimensions of 6 feet in height and 12 feet in diameter, the tank's size can be accommodated to the rear of the carport as well as to the front, neither of which would interfere with the view plane of the mountains.

Relocation would involve additional costs; however, financial limitations is not the overriding criteria in this case.

INTENT AND PURPOSE

The intent and purpose of the setback requirements is to provide adequate light, air, open space between structures and related spatial considerations and property boundaries at a scale acceptable to the immediate community and neighboring properties as publicly adopted in the building and zoning codes. In the case at hand, the water tank is 2 feet from the east side property line, where the minimum should be 10 feet. The 10 feet requirement was also posted on the site plan to emphasize and remind the builder to adhere to the proper distance. Despite the forewarning, this was not done.

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

Therefore, the Planning Director has concluded that this variance request to allow the minimum of 2 feet from the side yard property line be denied.

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: