

#378

November 29, 1989

CERTIFIED MAIL

Nicholas Herzmark
P. O. Box 1531
Pahoa, HI 96778

Dear Mr. Herzmark:

Variance Application (V89-14)
Rear Setback
Tax Map Key 1-2-31: 120

Your application for a variance from the Zoning Code setback requirements is partially approved and partially denied, as described by the following:

FINDINGS AND RECOMMENDATIONS

Having reviewed the subject variance request against the guidelines for considering variances, the Planning Director has concluded that the existing dwelling, including the bathroom/stairway/landing addition, be approved to remain 12 feet from the rear property line; however, the existing water tank/shower room portion be denied based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

Special and unusual circumstances apply to the subject real property which exist to a degree which obviously interfere with the best use or manner of development of the property. The real property in this instance consists of both the lot and the existing additions to the dwelling. The additions were built by the previous owners of the property without the necessary building permits. As a result, the dwelling now encroaches within the required minimum 20 feet rear yard setback. The enclosed bathroom addition portion lies 12 feet and the water tank/shower room is 3 feet from the rear property line. There are no other bathroom and shower room within the main portion of the dwelling.

ALTERNATIVES

The alternatives available to resolve this difficulty would be the removal of the bathroom and the relocation or reconstruction of the water tank/shower room to bring the dwelling into compliance

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with the Zoning Code requirements. The alternative to remove the bathroom is not deemed to be reasonable in as much as it would require substantial removal of the structure. The denial of the variance to retain the existing dwelling with a minimum 12 feet rear yard setback would impose an unreasonable and a design hardship on the petitioner.

The water tank/shower room proximity to the rear property line is determined to be imposing and disturbing to the adjacent property. Although this addition was constructed by previous owners, there are other reasonable alternatives to resolve this difficulty. There is sufficient buildable land available on this lot for these two uses (water tank and shower room). The water tank and/or shower room could be detached from the dwelling and relocated to the rear of the garage, or placed in the vast vacant front yard. A shower room could be constructed within the garage or within the area to the side of the bedroom between the dwelling and the garage.

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 building 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 (12 feet from the rear property line) of this existing dwelling will still provide for these functions, although it would not meet the minimum 20 feet rear yard setback as required by the Zoning Code. The adjacent lot to the north is presently leased to a papaya company for agricultural purposes. However, should a proposed structure be constructed on that parcel with its building wall extending to the property's minimum 20 foot side yard setback, there will be approximately 32 feet between the two structures which would still be sufficient. Thus, the existing 12-foot location of the dwelling would still employ and afford the air, light and circulatory functions that are the basis for requiring setbacks.

There may be some effects of this development situation which would be borne, in part, by the adjacent property owner. However, this would not necessarily be so depending on the design of the structural and landscaping development on the adjacent lot. Further, it is expected that regardless of the manner of development on the adjoining lot, the effect would not be substantial and could be further mitigated by appropriate landscaping within the subject property.

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In view of the above issues, it is determined that the granting of the variance with respect to the bathroom addition 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.

However, the proximity of the water tank/shower room will cause substantial adverse impact to the adjoining property. As mentioned above, there are other reasonable alternatives to resolve this situation. As such, it is further determined that the variance request to allow this portion of the structure to be setback 3 feet from the rear property line be denied.

Based on these findings, the Planning Director has concluded that approval of the variance request to retain the existing dwelling at a minimum 12 feet from the rear yard property line is subject to the following conditions:

1. The petitioners, its assigns or successors, shall be responsible for complying with all conditions of approval.
2. A building permit for the bathroom addition shall be obtained within thirty (30) days of the receipt of this variance.
3. Landscaping for screening purposes, meeting with the approval of the Planning Director, shall be installed along the rear property line.
4. Compliance with all other applicable State and County Regulations.
- 5. Should any of the foregoing conditions not be met, the Director may proceed to declare this variance null and void.

In accordance with the denial decision, the applicant shall relocate or reconstruct the water tank and/or shower room to another portion of the property to comply with the minimum setback requirements as stipulated by the Zoning Code within 120 days of receipt of this decision. A building permit shall be obtained beforehand.

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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.

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,



For DUANE KANUHA
Planning Director

DT:aeh

Encl: Background Report

cc: Planning Commission (w/encl)
DPW, Building Division
Mrs. Larry Clark
McGahan Enterprises