

CERTIFIED MAIL

May 4, 1990

Mr. Daniel Kirby, Sr.
48 Kahoa Street
Hilo, HI 96720

Dear Mr. Kirby:

Variance Application (V89-40)
Building Setback and Clearspace Requirements
Tax Map Key 2-6-25:04

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of a portion of your variance request to allow the following setback and clearspace for a recently remodelled existing residential structure:

- a. A 9.04-foot front yard setback in lieu of the required 20 feet;
 - b. A side yard setback of 8.4 feet from the north property line in lieu of the required 10 feet;
 - c. A side yard setback of 6.2 feet from the south property line in lieu of the required 10 feet; and
 - d. Corresponding clearspace encroachments for the above.
- The subject property is 17,922 square feet in area, identified by Tax Map Key 2-6-25:4, and is located on the makai-Puna (southeast) corner of Kahoa and Nahala Streets in South Hilo, Hawaii.

Having reviewed the subject variance requests, the Planning Director has concluded that the variance requests for structural encroachments setback and clearspace into the required 20-foot front yard be approved, and that variance requests for the encroachments into the south side yard setback be denied. Concurrently, the clearspace encroachment into the south side yard setback is also denied.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are 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.

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The subject property contains an existing single family dwelling constructed in 1969. The sections of the dwelling along the front (mauka) and the north property lines were built in accordance with the recently approved building permit and accompanying approved construction drawings except for encroachments into the required building setbacks. A major contributor to this encroachment is the fact that Kahoa Street has a 40-foot wide right-of-way, with a 16-foot wide pavement that is located 10 feet off center towards the west (mauka). Setback measurements were also taken from an existing hedge which was assumed to be the mauka boundary of the property; however, the hedge itself was planted by the previous owner and is also within the right-of-way. Existing shrubbery at the north end of the lot was assumed to be the north boundary which was later found to be incorrect.

No property survey was undertaken until after the building was constructed, and there was no "stop work" order issued by the building inspector when the discrepancy was first noted.

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 as it relates to structural encroachment into the front yard setback area.

ALTERNATIVES

With the construction already completed, there are no reasonable alternatives available for the building to meet the front yard setback requirements other than removing portions of the structure unless the adjoining property owner (the County) is willing to grant easements or convey the required amounts of land to make up the setback deficiencies. Requiring the alteration of the bedroom or garage sections is considered unreasonable as it would destroy the integrity of those buildings, and at great cost.

INTENT AND PURPOSE

The intent and purpose of the setback requirements are to ensure that adequate space, light, air circulation, and related spatial considerations are preserved between adjacent properties and buildings. In this case, the property owner at the front is the County, with the land being the right-of-way for Kahoa Road. Because the pavement is off center by 10 feet to the west, the proximity of the encroaching bedroom, lanai, and garage sections of the dwelling do not intrude upon an adjacent residential site; however, the lanai is but 4.3 feet from that front boundary. There is a visual intrusion from the street by

the encroachments, but they are partly buffered and screened by existing hedges and trees, and there is 18 feet of grassed road shoulder from the road pavement down to the property's front boundary. The dwellings on the mauka side of the street, on the other hand, have only 6 feet of grassed shoulder in front of their boundaries.

The property owner adjacent to the north of the applicant's lot does not object to the 8.4-foot building setback in lieu of the required 10 feet, as the interval between the lots is heavily screened by plantings, and the dwellings are about 100 feet apart.

Based on the foregoing findings, approval of the variance request for the front yard setback and clearspace 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.

Therefore, the Planning Director has concluded that the portion of the request consisting of the north corner bedroom/bathroom, the lanai, and the 2-car garage be approved subject to the following conditions:

1. The petitioner, his assigns, or successors, shall be responsible for complying with all stated conditions of approval.
2. The protruding tip at the point of the lanai roof shall be removed.
3. The entire front wooden fence including the support posts shall be reduced in height to less than six (6) feet in height as measured from the top of each post's existing concrete base.
4. The owner shall:
 - a. Absolve the County of any responsibility for any vehicle-caused or traffic related damage to the dwelling or persons therein occurring from the use of Kahoa Road by the general public and for any property damage resulting from the County's maintenance, improvement, or repair of Kahoa Road. Acceptance of this variance shall be considered as the owner's immediate acceptance of this condition.

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- b. Should the County require additional land for Kahoa Street widening, the owner shall agree that any land acquisition by the County of the subject property shall be based on its unimproved land price assessment, which shall not include the dwelling or any portions of it which project into the 20-foot setback area.
- c. Within ninety (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 dwelling 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.
5. A building permit for the gazebo located next to the swimming pool shall be obtained by the applicant within ninety (90) days of his receipt of this Variance Permit.
6. Trees and shrubs planted outside the fence shall be removed to afford drivers a clear and unobstructed 150 feet of horizontal sight distance to the stop sign nearest the northwest corner of the lot.
7. Plan Approval shall be required of all construction activity required by this Variance Permit and the fulfillment of Condition Nos. 3, 4, 5, and 6.
8. All other applicable State and County rules and regulations shall be complied with.

CARPORT VARIANCE DENIED

There are not found to be sufficient special and unusual circumstances applying to the real property in this case which would warrant granting the variance for this part of the building.

The new carport on the south of the parcel was built in excess of the scope of the approved building permit. The permit prescribed a 20-foot wide carport, but the carport was illegally constructed in size to 24 feet in width and therefore projects into the required side yard setback area by 3.8 feet. It is now presently 6.2 feet from the property boundary instead of the 10 feet as required by Code. Additionally, this carport was represented to be an "existing" structure rather than one under

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construction on the second building permit application. Since four (4) feet more of carport was constructed, it is concluded that the addition was done by design, and with full intent to violate the side yard setback provisions.

Although structural alteration to the carport will pose some financial hardship, it is deemed that appropriate remedial action is necessary given the violative nature of its construction. Further, this structure is non-habitable as compared to the rest of this variance request.

It is further determined that approval of this side yard variance request under the current circumstances would be violative of the intent and purpose of the Zoning Code and would set precedence that would cumulatively be materially detrimental to the public's welfare and adversely impact adjacent properties.

Therefore, the variance request to allow a carport projection into the side yard setback along the southern property line is denied. As a result, the applicant shall remove or alter the carport so that it fully conforms with the 10-foot setback requirement of the Zoning Code and shall obtain a building permit for such renovation within ninety (90) days of receipt of this notice.

Furthermore, the applicant shall ensure that the south boundary side fence including its support posts conforms to the Zoning Code requirement of being less than 6 feet in height, otherwise, it shall conform to the 10-foot setback requirement for all structures.

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

Sincerely,


DUANE KANUHA
Planning Director

DT:lm

cc: J. Walsh Hanley
SMA Section