

CERTIFIED MAIL

April 14, 1992

Mr. and Mrs. William Cox
c/o Tim Lui-Kwan, Esq.
Carlsmith Ball Wichamn Murray
Case Mukai & Ichiki
Attorneys At Law
121 Waiianuenue Avenue
Hilo, Hawaii 96720

Dear Mr. and Mrs. Cox:

Variance Application (V91-22)
Applicants: William and Beverly Cox
Variance from Side Yard Requirements of the Zoning Code
Tax Map Key 9-9-7:85

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 allow the existing 18 ft. diameter concrete water tank to remain with a 7 1/2 ft. side yard in lieu of the 10 ft. side yard required by the Zoning Code in the RS-10 zone district. The subject property is 15,951 s.f. in area, identified by tax map key 9-9-7:85 and is located at the northeast corner of the intersection of Kaakia Place with Pukeawe Circle in the Volcano Golf and Country Club Subdivision, Keauhou, Kau.

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 obviously interferes with the best use or manner of development of the property.

Although the building permit's site plan showed proper placement of the structures, the resultant construction showed the water tank had been shifted west, a few feet toward the road such that it became sited 3 1/2 ft. from the dwelling's north wall, and the side yard became 7 1/2 ft. instead of the 10 ft. required. The shifting of the water tank is attributed to the

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architect who claims she had no recourse but to move it away from a suddenly discovered lava fault which would have been a dangerous location for a full heavy structure. A site inspection revealed that there is indeed a lava cave or tube in close proximity to the original tank site.

While communicating the intent to shift the location could have more readily resolved the matter, the fact remains that the discovery of the lava-formed cavity would, for safety's sake, preclude the emplacement of the tank.

ALTERNATIVES

There are limited alternatives. To the rear of the dwelling is the location of a 35' by 20' lava tube, 6 to 8 ft. deep or more, and to the rear of that pit, the land slopes downward in a steep incline. To the south (still the rear) of the house, cracks in the ground indicate unstable conditions and, being a corner lot the only alternative site would have been an ungainly structure in the front yard and street corner. Being a roof catchment water system, the catchment surface normally has to be above the level of the storage tank for gravity flow of the rainwater into storage. This has also limited the alternatives available to the water tanks location.

INTENT AND PURPOSE

The intent and purpose of the setback requirements of the Zoning Code are to permit a proportionate and adequate amount of space, air, light and related spatial considerations between buildings and adjacent properties in an amount commensurate with a community's standards and expectations. In this case, setback requirements for lots of this size, in this zone, have been publicly adopted as the standard 10 ft.

In this case, as well as for most homes in this subdivision, the lots are heavily wooded whereby side or rear-placed accessory structures are generally rendered invisible from both the fronting street and neighboring properties because of the profusion of trees (mostly ohia) and fern. Lot boundaries are not naturally discernible as existing trees are usually maintained. With the lot next door being vacant and the owner not objecting, the 2 1/2 ft. "shortage" in the required 10 ft. side yard is not apparent. The encroachment is not noticeable.

The proximity of the water tank to the dwelling disaccommodates only the owner; any future owners will be able to decide beforehand if the narrow 3 1/2 ft. separation is an inconvenience or hazard to them. One of the reasons for the 10 ft. requirement is to allow for fire fighting equipment to pass

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readily between the structures. In this instance, there is space to the side and the owners are of their own volition requesting a narrowing of the space from 10 ft. to 3 1/2 ft. Any hindering of access or mobility between the structures is considered to be self-imposed.

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.

Therefore, 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. The only structure permitted to remain within the north side yard area of this lot shall be the existing concrete water tank.
3. The wooden shed structure within the 10 ft. north side yard shall be removed from the side yard. Its relocation shall comply with the Zoning Code. The applicants shall apply for a building permit for this structure immediately, and submit a sworn statement to this office attesting to compliance with this condition within sixty (60) days of receipt of this letter.
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 request null and void.

If you have any questions on this matter, please feel free to contact Donald Tong of my staff.

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:lm
4964D

cc: West Hawaii Office
DPW-Engineering Div.