

V483



## Planning Department

County of Hawaii • 25 Aupuni Street, Room 109 • Hilo, Hawaii 96720 • (808) 961-8288

### CERTIFIED MAIL

January 6, 1993

Francis Hogan, Esq.  
Ashford & Wriston  
Title Guaranty Building  
235 Queen Street  
P. O. Box 131  
Honolulu, HI 96810

Dear Mr. Hogan:

Variance Application (V 91-27)  
Petitioner: Dr. and Mrs. Morrison  
Frontyard Setback Variance  
Tax Map Key: 6-9-03: 10

The subject application requests a variance from the zoning code's front yard requirement of 20 ft. to permit a swimming pool (lap pool) within one of the parcel's three 20 ft. yards. Two front yards are required by virtue of this being a corner lot; the third 20 ft. setback is a requirement of the shoreline setback rules.

The zoning code allows a "projection" for open type construction into the setback area of 6 ft. in this case. The resultant swimming pool setback distance would, if the variance were granted, be 3 ft. instead of the required 14 ft. (20 ft. less 6 ft. allowable projection).

The application states that the special and unusual circumstance applying to this lot is that it has three 20 ft. setback requirements.

Applicant's dwelling was started in March 1991 and was completed 15 months later in June 1992. The variance application was initially submitted in September 1991, was found to be incomplete and in November 1991, was accepted as a variance application. The lap pool, is planned to be 40 ft. by 8 ft. providing the owners who are elderly, a safe venue for physical exercise and therapy. It would be built along the lot's north front boundary (adjoining a public access to the beach).

Francis Hogan, Esq.  
January 6, 1993  
Page 2

On this 14,000 sq.ft. lot, the dwelling has exterior dimensions of 96 ft. by 70 ft., encompassing approximately 6700 sq.ft. The property is zoned RS-10.

After reviewing your application and the information submitted in its behalf, the Planning Director has concluded that your variance request should be denied. The reasons for the denial are:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.

The applicants state that since their lot is a corner parcel, and along the shoreline, it is confronted with the special and unusual circumstance of having two front yard setback requirements plus the shoreline setback. While their corner lot indeed has two frontyard requirements it is also a fact that virtually all corner lots everywhere have two frontyards. Furthermore, all shoreline properties have at least a 20 ft. setback requirement as well. It is therefore not at all an unusual or special circumstance for a corner/shoreline lot to be confronted with these building setback conditions.

Also, this parcel contains a seawall which projects onto the sand beach and, depending on the tide, into the water. Although the applicants did not construct the seawall (a previous owner did) it is the certified shoreline by virtue of its being the upper limit of the high wash of waves. Were the wall not presently impeding the wash of waves, the upper reaches of the waves would be more inland, as indicated by adjoining properties without seawalls. The result of the seawall, therefore, is a significantly deeper (seaward) lot than a shoreline survey determines. The existence of the seawall is a definite benefit occurring to the owner, since the certified shoreline (which the seawall is) constitutes the beginning of the seaward setback line. This fact underscores the lack of hardship applying to this property. The seawall has, in actuality, given this lot a distinct advantage. Any hardship related to the property has been self imposed.

Francis Hogan, Esq.  
January 6, 1993  
Page 3

Furthermore, the owners were aware of the building setback requirements in the early stages of this lot's development, noting the shoreline survey requirement, SMA and the single family agreement that they were earlier confronted with and which they had to resolve.

The applicants also state that they "require the house layout as shown" (i.e. - house built to virtually the limits of the setback requirement). There were no provisions (space) for the pool in the original house plans. By using the buildable space on the lot to the fullest for the main dwelling, the owner, of his own volition, effectively foreclosed his expansion design options, unless the county zoning code requirement could be waived.

By virtually maximizing the size of their dwelling structure and then asking for a variance to permit an accessory addition, the owners have closed their own doors with no special or unusual circumstances being present. Such actions by the owners do not warrant the granting of a variance. The 14,000 sq. ft. lot could have readily accommodated even a full size family pool had the dwelling not occupied as much "footprint".

There are not found to be the requisite special and unusual circumstances applying to the land to justify the variance. The lot is level, evenly proportioned and sized with respect to the surrounding lots. There are at least 17 similar shoreline corner lots such as the applicant's (and double that if the mauka corner lots are counted) in this Puako Community. The fact that the owners planned and that they require a variance to incorporate an addition, is insufficient cause for a variance to be granted.

#### ALTERNATIVES

A myriad of design alternatives were available to the applicant even while the dwelling was being constructed and certainly while it was being planned.

Being built to virtually the maximum size allowed, the dwelling walls envelop a residence of over 6700 sq. ft. in area where a heretofore "large" house would more likely be 3,000 to

Francis Hogan, Esq.  
January 6, 1993  
Page 4

4,000 sq. ft. in "footprint" area for a lot of this size in this community. Although the size of a dwelling is entirely the owner's prerogative, when building to the maximum (which the various county codes do allow) leaves no room for additions, the consequences of building to the maximum do not comprise the requisite "special and unusual circumstances applying to the property . . ." which are the main criteria for the granting of any zoning code variance. The difficulty which the owner confronts is of his own volition, and can not be attributed to the property.

#### INTENT AND PURPOSE

The intent and purpose of the building setback requirements is to afford an amount of light, air, open space and related spatial considerations between buildings and their property lines commensurate with the expectations and standards of the respective communities. In this case, building setback requirements are 20 ft. for frontyards, 20 ft. from the shoreline of this parcel and 10 ft. for the single side boundary, and have been imposed for over 20 years.

The applicant has built to the very limits of the 3 of 4 boundary setbacks comprising this lot. The bulk of this building plus its solid walls fill the buildable space. While permissible as built, the building's bulk would be lessened by a horizontal distance of 10 ft. (assuming the same pool size and clear space distances) if the building were to incorporate the same spatial dimensions and comply fully with the zoning code (i.e. - without the requested variance).

The applicant's request for a variance therefore does not meet the criteria of a special and unusual circumstance applying to the property, and therefore can not be granted a variance.

There were two letters from the general public opposing the variance request and one letter supporting it.

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

Francis Hogan, Esq.  
January 6, 1993  
Page 5

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 Donald Tong of this office.

Sincerely,



VIRGINIA H. GOLDSTEIN  
Planning Director

DT:mlm  
7289D

cc: Dr. and Mrs. Morrison