

CERTIFIED MAIL

May 15, 1991

Mr. Mark C. Murray
1044 Olioli Way
Hilo, HI 96720

Dear Mr. Murray:

Variance Application (V90-45)
Minimum Rear Yard Setback Requirement
Tax Map Key: 2-4-22:115

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 retention of an existing portion of a one story single family dwelling with an 11-foot rear yard setback and 9'-4" open clearspace yard in lieu of the minimum requirements of 20 feet and 14 feet, respectively, as required by the County Zoning Code in a Single-Family Residential-10,000 square feet (RS-10) zoned district. The subject property, consisting of approximately 10,694 square feet, is located along the west side of Olioli Way, approximately 100 feet south of the intersection of Olioli Way and Olioli Place in the Komohana Gardens Subdivision Unit 2, Waiakea Homesteads, South Hilo, Hawaii, Tax Map Key 2-4-22:115.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum setback requirements for a portion of the existing single family dwelling. The existing setback problem did not surface until the sale of the subject property was in transaction. A building permit for the dwelling was issued to a previous owner by the Department of Public Works and subsequently final inspection approval was granted in October 1973. A building permit for addition of roof over an existing open patio was issued to another previous owner and completed in 1977. However, the enclosed lanai was subsequently completed without a building permit. The enclosed lanai was already in existence at the time of the conveyance of the property to the petitioner.

MAY 16 1991

Mr. Mark C. Murray
May 15, 1991
Page 2

The 9 foot encroachment into the 20 foot rear yard setback area is located mid-section of the existing dwelling. This encroachment was in existence for over ten years. Considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or petitioner 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 the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the petitioner. Removing or remodeling portion of the existing enclosed lanai is not economically feasible and would disrupt the design and function of the building. The applicant could attempt to purchase a portion of the adjacent crescent-shaped strip of land and consolidate it with the subject property. However, this may also involve a change of zone action from Agriculture to Residential. The alternatives would be putting an excessive demand on the petitioner when a more reasonable alternative is available.

The setback encroachment occurred prior to the petitioner's acquisition of the property. The action taken by the petitioner to legitimize the existing improvements is one which is being done on his own accord.

INTENT AND PURPOSE

The intent and purpose of the minimum building setback requirements on a property are to assure that adequate air, light, circulation and visual and spatial considerations are available between structures and property lines. In this particular request, the location of this existing enclosed lanai will still provide for these functions, although it does not meet the minimum 20 foot rear yard setback as required by the Zoning Code. The enclosed lanai portion lies approximately 75 feet and 55 feet from the north and south, respectively, property lines. The existing dwelling on the adjoining property to the north was constructed since 1982. The adjoining property on the south side is the subdivision common area and to the west is the drainage channel and 35-foot strip of land.

In view of the above issues, this variance request would be consistent with the general purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially

Mr. Mark C. Murray
May 15, 1991
Page 3

detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

The variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, it assigns or successors, shall be responsible for obtaining a Building Permit from the Department of Public Works for the existing enclosed family room/office addition within three (3) months of this Variance approval.
3. That all future structural additions to the dwelling shall be in compliance with all Zoning Code requirements and no other setback variances shall be considered for any development of this property.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

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

Sincerely,



NORMAN K. HAYASHI
Planning Director

AK:sha
1725D
cc: Building Division, DPW

MAY 16 1991