

August 5, 1991

Chester and Gloria Sohn
c/o Cindy Mayo
P.O. Box 4795
Kailua-Kona, HI 96745

Dear Mr. and Mrs. Sohn:

Variance Application (V91-9)
Petitioners: Chester and Gloria Sohn
Variance from Minimum Rear Yard Requirements
TMK: 7-7-17:88

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your request. The reasons for the denial are:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances applying to the subject property which deprive the petitioner of substantial property rights that would otherwise be available, or which obviously interfere with the best use or manner of development of the property.

The applicant constructed this dwelling in accordance with zoning code requirements in 1979 on a typical White Sand Beach Estates lot consisting of 9,375 square feet in land area. The Building Permit No. 783035 described a 1,620 square foot dwelling. Its nearest interior lot boundary was 8 feet. The zoning code requirement was then, (as now) 15 feet front and rear yards, 8 feet side yards. The lot is a perfect rectangle, with dimensions of 75 feet by 125 feet.

There are no further building permits issued for this lot according to Department of Public Works records and yet the building was expanded and added to since its construction,

according to the applicant's statement and the surveyor-drawn site plan which shows the structure to now be approximately 2,256 square feet in area excluding the carport. A rear yard setback encroachment of 11+ feet has resulted from the building additions. There now exists a 4.3 feet rear building setback instead of the required 15 feet. The only reason offered by the applicant's representative is that, "due to an error in the construction of the addition on this home, the home now sits in the setback area".

This reason is not considered to be a special or unusual circumstance applying to the real property which deprives the owner of substantial property rights or interferes with the best use of his property.

Furthermore, had the owner applied for a building permit for his additions, he would have been advised of the encroachment which would not be permitted. It is considered that the owner purposefully and wilfully avoided obtaining a building permit. The situation is aggravated by his building into the setback area. The dilemma is therefore completely self imposed and not at all caused by special and unusual circumstances applying to the property (which are the criteria for granting a variance).

Based on the foregoing, it has been determined that there are no 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 obviously interferes with the best use or manner of development of the property.

ALTERNATIVES

There are reasonable alternatives to correct this setback violation. One is to acquire sufficient land to the rear to accommodate the self-caused disparity. Another is to remove the encroaching portions of the building. This latter action is considered the most reasonable inasmuch as the addition was illegally built, and the transgression would have been preventable, had a building permit application been pursued. Granting the variance is not considered an alternative because there are not found to be the requisite special or unusual circumstances applying to the land depriving or interfering with the owner's proper use of the land.

The land, with regard to the zoning setback requirements, was in fact improperly used.

INTENT AND PURPOSE

Intent and purpose of the setback requirements is to ensure adjacent property owners of a certain, common amount of air, light, open space and related spatial considerations between buildings and property lines. In this general area and for lots of this size, 15 feet rear yards are the norm. In this case, the owner has wilfully caused his dwelling to intrude into that open space to the extent that his structure is 4.3 feet from the rear boundary. This has disenfranchised the adjacent property owner and has caused other neighbors in the subdivision to object to the illegal encroachment. The variance, if granted would result in preferential treatment in favor of the applicant, and be an affront to the community and to the law abiding neighbors who have not encroached into the rear yards required by the zoning code.

For the reasons stated above, this variance application is denied, as its approval would cause adverse impact to the area's character and to adjoining properties and does not meet the criteria for the granting of a variance.

As a consequence of the denial action, the applicant is required to rectify the encroachment violation within 180 days of receipt of this letter. Within 90 days of the receipt of this letter the applicant shall either obtain a building permit for the removal of the encroaching portion of the building or submit plats which commence appropriate subdivision action to obtain sufficient additional land from the adjacent property to satisfy the required rear setback distance.

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 (10) copies of a statement of the specific grounds for the appeal.

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Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. Within sixty (60) 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 at 961-8288.

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:mra
2643D

cc: West Hawaii Office
Building Division - DPW