

Lorraine R. Inouye  
Mayor

Norman K. Hayashi  
Director

Tad Nagasako  
Deputy Director



## Planning Department

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

### CERTIFIED MAIL

August 12, 1992

Mr. Mark Richards  
Maryl Development Inc.  
P.O. Box 1928  
Kailua-Kona, Hawaii 96745

Dear Mr. Richards:

Variance Application (V92-9)  
Variance from Minimum Rear Yard Setback Requirements  
Tax Map Key: 7-6-24: 67

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow the existing dwelling with a rear yard setback of 17.6 feet, the existing swimming pool with a 17 foot rear yard setback and the open stairway with a 11.5 foot open clearspace yard in lieu of the minimum 20 foot rear yard setback and 14 foot open clearspace yard as required in Chapter 25 (Zoning Code), Article 4 (RS, Single Family Residential Districts), Section 25-124 (a)(2)(A) (Minimum Yards) and Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations, Section 25-66(a)(1) (Projections into required yards and open spaces).

The subject property is located on the south side of Keakealani Street approximately 200 feet west of the Keakealani Street/Kuakini Highway intersection, Holualoa 1st and 2nd, North Kona, Hawaii, TMK: 7-6-24: 67.

The Planning Director has concluded that the variance request from the minimum rear yard setback requirements should be approved, based on the following findings:

### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum setback requirements for the existing single family dwelling and swimming pool and open stairway. The existing setback problem did not surface until a new survey of the subject property was conducted after all improvements had been completed.

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The original plans for the existing one story single family dwelling and the swimming pool and deck was approved by the Planning Department and the Building Permits issued by the Department of Public Works, Building Division as the plans for both improvements had shown that all required building setbacks were to be complied with.

The subject property has an east to west slope as well as a north to south slope. The rear (south) property lines slopes down to the adjacent parcels 106 and 107. There is a difference of approximately 8 to 10 feet in elevation between the subject property and the parcels to the south. Although the configuration of the subject property is rectangular in shape, the sloping topography and the location of the property pins of the subject and adjacent properties reinforces the assumption that the laying of the foundation was due to a staking error in the field.

Therefore, 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 applicant 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 applicant. Alternatives available to the petitioner include a possible consolidation/resubdivision action of the subject property and the adjacent lots, removing the improvements or remodeling the improvements. The consolidation/resubdivision alternative is not a viable alternative due to the minimum size of the lots and the configuration of the subject property in conjunction with the lot size and design of the adjacent parcels to the south. The resiting or remodeling of the improvements is economically unreasonable and would disrupt the design, function and architecture of the existing improvements.

Based on the above cited considerations, there is no reasonable available area for resiting and/or remodeling the improvements without excessive cost and undesirable design changes for the unfortunate staking error that was done. The petitioner is also unable to consider a consolidation/resubdivision alternative. Therefore while these alternatives are available to the petitioner, they are deemed to be unreasonable and would place excessive demands on the petitioner when a more reasonable alternative is available by the granting of this variance application.

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#### INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures. The subject dwelling and swimming pool and deck are centrally located on the subject property.

There is a significant slope down from the subject property to the adjacent properties to the south which provides an added visual open space between the subject improvements and the adjacent improvements to the south. The dwellings constructed on the adjacent properties to the south are approximately 30 to 40 feet down from the subject dwelling.

Thus, in distance terms, the required setbacks between any two structures on two separate lots are being provided. In addition, the location of the slope to the rear of the property down to the adjacent parcels will lessen the impact of the building encroachments.

In this particular case, the primary impacted properties are the two parcels located to the south of the subject property. While the Zoning Code requires a minimum 20 foot side yard setback, the 2.4 foot (dwelling), 3 foot (swimming pool) and 2.5 foot (open stairway) encroachments respectively in this particular case are only for one corner of the subject dwelling and one corner of the swimming pool and the open stairway. The rest of the dwelling complies with the minimum yard setbacks and should not have an adverse impact on the development of the property to the south.

In addition, the Department of Public Works had no objections to the proposed variance request.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

This 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.

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2. 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.

Should you have any questions on any of the above, please feel welcome to contact our office.

Sincerely,



NORMAN K. HAYASHI  
Planning Director

RHY/rld  
6012D  
Enclosures  
cc: Steven S. C. Lim, Esq.  
Richard Ishida  
West Hawaii Office  
James Turner (w/Encl)