

VAR 564

CERTIFIED MAIL

January 26, 1994

COPY

Mr. Paul McHugh
2460 Ivy Road
Oceanside, CA 92054

Dear Mr. McHugh:

Variance Application WH(VAR93-67)
Applicants: PAUL McHUGH
Variance from Minimum SIDE & REAR YARD SETBACK Requirements
Swimming pool and deck addition
Tax Map Key: 7-6-20: 45

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is situated in the Kilohana Subdivision which is in the Single Family Residential -10,000 square foot (RS-10) zone district.
2. The subject single family dwelling was issued Building Permit No. 004682 on December 15, 1980 and closed on June 16, 1981 by the Building Department.
3. Building Permit No. 005034 was issued on July 17, 1981 and closed on April 12, 1982 by the Building Department for the construction of a swimming pool and deck addition to the single family dwelling. The homeowner, at that time represented on the site plan submitted for this building permit that the addition would comply with the minimum side and rear yard setbacks required by the Zoning Code.
4. A certified survey map dated July 25, 1991 prepared by Wes Thomas & Associates shows the swimming pool and wooden deck addition encroaching over the rear property line and a 3.3 foot side yard setback for the above grade swimming pool.

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5. The petitioner purchased the dwelling in 1989, some 7 years after the construction of the dwelling and the swimming pool deck addition.
6. The variance application was filed with the Planning Department on November 23, 1993.
7. The petitioner indicates his intention to remove portions of the deck which encroaches over the rear property line and portion of the swimming pool deck to meet the 8 foot side yard setback.
8. There are no special or unusual circumstances related to the property which would necessitate the approval of this variance for the swimming pool and deck to have a zero rear yard setback. The lots in this subdivision are small sized lots and with standard setback requirements. There are no distinguishing factors related to this property nor to the improvements which deprives the petitioner of substantial property rights or which interferes with the best use or manner of development of the property.

Based on the above circumstances, there are no unusual or special circumstances related to the property or deprivation of substantial property rights which would necessitate the setback encroachments. The 12 year time factor of the constructed swimming pool and deck improvements needed to be considered with whether or not special or unusual circumstances were evident with the subject property which necessitated the present condition. The evidence does not show that.

Therefore, considering the foregoing facts, it is determined that there are no 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

1. The subject property is a triangular shaped parcel with a front and rear yard and two side yard setbacks as required by the Zoning Code.
2. The proposed swimming pool and deck addition when approved by the Planning Department and the Department of Public Works under Building Permit #004682 and 005034 represented that the improvements would comply with the minimum setback requirements of the Zoning Code. The original dwelling complied with the minimum rear yard setback requirements,

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as such, the removal of the swimming pool and deck addition to the rear of the dwelling is also an alternative that the petitioner has.

3. The applicant does have available land area in which to comply with the minimum setback requirements as was originally approved under Building Permit No. 005034. Although the copies of the approved plans are not available, it can be assumed that the approval of the swimming pool and deck addition originally complied with the minimum zoning code setback requirements. The petitioner is already conceding to remove the encroaching portions of the pool deck at the rear and the side yard, therefore, the removal to meet the zoning code setback requirements is available and an viable option. Therefore, although it will involve costs for the petitioner, it is not expected to be an unreasonable option due to the circumstances.

Based on the above cited considerations, there is a reasonable solution which is not excessive considering the situation.

INTENT AND PURPOSE

1. The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing dwelling and swimming pool and deck addition on the subject property had been approved to comply with all Zoning Code and Housing Code setback requirements. The lots in the Kilohana Subdivision are small sized lots, therefore, the minimum setback requirements are critical as they provide the necessary air, light, and visual proportion between dwellings. Although there is an open space area between the lots, this was provided to create more open space between developments and not for the purposes of allowing structures to be built up to the property line. As such, considering these factors, the encroaching improvements constructed within the setback area do not provide for the necessary air, light, and physical circulation around the dwelling structure and between adjacent properties.

Based on the foregoing findings, this variance request would not 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.

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Therefore, this variance request for the swimming pool and deck addition is hereby denied.

As a consequence of this denial action, the applicant shall remove the encroaching elements of the swimming pool and deck addition to meet with the minimum Zoning Code setback requirements. The removal of all the encroachments shall be completed within 6 months of receipt of this denial. The applicant shall furthermore submit a letter to the Planning Director demonstrating that compliance with the removal of the encroachments has been completed.

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 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 be 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.

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Should you have any questions, please feel free to contact Royden Yamasato of our office at 329-4878.

Sincerely,

VIRGINIA GOLDSTEIN
Planning Director

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