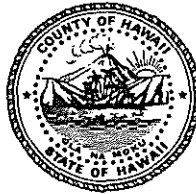


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

VAR 597  
denied

CERTIFIED MAIL

May 23, 1994

COPY

Mr. James Turner  
SunSplash Pool & Spa, Inc.  
74-5616 Alapa Street  
Kailua-Kona, Hawaii 96740

Dear Mr. Turner:

Variance Application WH(VAR94-29)  
Applicant: SUNSPLASH POOL & SPA, INC.  
Variance from Minimum Rear Yard Setback Requirements  
Tax Map Key: 7-3-052: 011

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the denial of your variance request to allow an ABOVE GRADE SWIMMING POOL with a 15 foot rear yard setback in lieu of the minimum 25 feet rear yard setback as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), SECTION 25-124 (a)(3) (Minimum yards).

The subject property is located on the south side of Hi'olani Street approximately 117 feet east of the Hi'olani Street/'Ama'ama Street intersection in the Pu'uohonua Subdivision, Phase I, Kalaoa 5th, North Kona, Hawaii, TMK:7-3-052: 011.

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Pu'uohonua Subdivision consisting of 20,002 square feet of land area.
2. The subject single family dwelling was issued Building Permit No. 925786 on June 9, 1992 and closed by the Building Division on January 15, 1993.
3. The applicant is proposing to construct an above grade swimming pool with a 15 foot rear yard setback in lieu of the minimum 25 feet rear yard setback as required by Chapter 25 (Zoning Code).

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MAY 23 - 1994

Mr. James Turner  
Page 2  
May 23, 1994

4. The lot size of the property is 20,002 square feet in size and is rectangular in shape.
5. There are no special or unusual circumstances related to the property which distinguishes itself from the other lots in the subdivision and would thus necessitate the approval of this variance. The lots in this subdivision are large sized lots and have the capability to comply with standard setback requirements for this zone district. There are no distinguishing factors related to this property nor to the proposed improvements which deprives the petitioner of substantial property rights or which interferes with the best use or manner of development of the property.
6. The variance application was filed with the Planning Department on March 15, 1994.

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 granting of this setback variance.

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 TYPICAL rectangular shaped parcel with a front and rear yard and two side yard setbacks as required by the Zoning Code.
2. The original dwelling complied with the minimum rear yard setback requirements, as such, the addition of the above ground swimming pool to the rear of the dwelling would not comply with the minimum setback requirements.
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. 925786. Therefore, the petitioners do have reasonable alternatives on the subject property to construct a swimming pool without the need for a variance from the minimum yard setback requirements.

Mr. James Turner  
Page 3  
May 23, 1994

Therefore, there are other reasonable alternatives that would resolve the difficulty.

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 proposed above ground swimming pool on the subject property would not comply with the Zoning Code setback requirements. The lots in the Pu'uohonu Subdivision are large sized lots, therefore, the minimum setback requirements are critical as they provide the necessary air, light, and visual proportion between the development of buildings on each lot. 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 closer to the property lines. As such, considering these factors, the variance request to construct within the setback area will diminish the proportion and scale of 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.

Therefore, this variance request for the construction of an above grade swimming pool with a 15 foot rear yard setback is hereby denied.

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

Mr. James Turner  
Page 4  
May 23, 1994


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.

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

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

RHY:rld  
0938Q

xc: DPW-Building, Kona Office  
West Hawaii Office  
Kaloko Business Partners  
661 S. East 162nd Avenue  
Portland, Oregon 97233