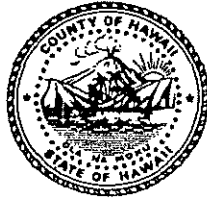


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

March 17, 2001

Mr. Richard S. Marston
15-115 Welea Street
Pahoa, HI 96778

Dear Mr. Marston:

Variance Application (VAR 01-12) 1192
Applicant: RICHARD SALVATORE MARSTON
Owner: RICHARD SALVATORE MARSTON
Request: Variance From Minimum Yards
Pursuant to Chapter 25, Hawaii County Zoning Code
Tax Map Key: 1-5-111:090, Lot 1822

We regret to inform you that after reviewing your application, the Planning Director denies your variance request to allow a proposed dwelling and garage with a 15 feet front yard in lieu of the minimum 20 feet front yard as required by Chapter 25, Article 5, Division 5, Section 25-5-56(2)(A), Article 4, Division 4, Section 25-4-44(a), Ordinance 97-88.

The Planning Director has concluded that the variance request from the minimum side yard and open space requirements should be denied based on the following findings:

1. The subject property containing 11,965 square feet is Lot 1822, portion of Hawaiian Shores Subdivision, File Plan 737, Waiakahiula, Puna, Hawaii.
2. The property is largely rectangular in shape with frontage on Papai Street and Puni Lapa North. The frontage along Papai Street is 76 feet while the frontage along Puni Lapa North is 32.6 feet. The longest side is 159.02 feet while the shorter side is 130 feet in length.
3. The State Land Use Commission Classification is Urban and the County Zoning is Agricultural (A-1a).

002823
MAR 19 2001

Mr. Richard S. Marston
Page 2
March 17, 2001

4. The Site Plan submitted with this Application shows the proposed dwelling and garage with a front yard (setback) from Papai Street of 16 feet and side yards of 10 feet with roof overhangs into the respective yards. The overhangs result from eave projections of 3 feet and 4-5 feet at corners of the roof. The Site Plan shows approximately 23 feet between the nearest corner of the dwelling to an "existing puka".
5. In support of the request, the Applicant states:

"Most of the lots in my subdivision of Hawaiian Shores are a little smaller and therefore have a setback of 15-16 feet required from the front.

"My lot has a special configuration of being road to road. The back road being about thirty feet up from the front road. Thus, my lot has a steep hillside across it, about three-quarters in from the front. In addition, there is a water lily pond dug from an existing puka, hugging the base of the hillside. This leaves me with about 6,400 square feet of buildable space to situate the one story house and garage.

"Therefore, I respectfully request a variance from the required twenty foot setback for a 11,965 square foot lot to sixteen feet from the front affecting only the one side of the garage.

"Please refer to the plot plan for any clarification."

6. The Department of Public Works comments in follow in part:

"Buildings shall conform to all requirements of code and statutes pertaining to building construction. The minimum setbacks for residential structures are 3-ft. side and 3-ft. rear. No openings in the exterior walls are permitted less than 3-ft. from the property line.

"Papai Street, fronting the subject property, is a Private road. It has an existing 40-ft. wide right-of-way. Planning Department will determine the necessary width of the future road-widening setback needed.

"The subject property is found within Flood Zone "X", according to the Flood Insurance Rate Map dated September 16, 1988."

Mr. Richard S. Marston
Page 3
March 17, 2001

7. The Department of Finance-Real Property Tax memorandum dated February 5, 2001, in the variance file states in part:

“There are no comments at this time.”

“The Real Property taxes are paid through June 30, 2001.”

8. The Department of Health in their Memorandum of February 5, 2001 states: “We have no objections to the propose variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained.”
9. The variance application was filed with the Planning Department on January 18, 2001.
10. There were no objections or comments received from the surrounding property owners.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There is no evidence submitted which shows or justifies the necessity for approval of the variance or for any special or unusual circumstances related to the property which would deprive the owner 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.

1. The subject property is generally a rectangular shaped parcel. The parcel is large enough that structures could be constructed by meeting the minimum Zoning Code setback requirements.
2. The surrounding area consists of a mixture of single-family residences and vacant lots.
3. The applicant’s ability to comply with the minimum front yard setback requirements is available without a variance. The proposed dwelling and garage can be moved four feet closer towards the “existing puka” or lily pond.

INTENT AND PURPOSE

The Zoning Code is applied and administered within the framework of the general plan, which is a long range, comprehensive, general plan prepared to guide the overall future development of the County. Within this framework, the Zoning Code purpose is to promoting health, safety, morals, or the general welfare of the County, and regulate and restrict the height, size of buildings, other structures, the percentage of a building site that may be occupied, off-street

Mr. Richard S. Marston

Page 4

March 17, 2001

parking, setbacks, size of yards, courts, open spaces, density of population, location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air, light, physical and visual circulation is available between structures and property lines. The Zoning Code requires a minimum 20 feet front yard, in this particular case, the proposed encroachment will visually and physically impact or be adverse to any adjacent properties or development with the granting of this variance.

This variance request would not be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. In addition, should this variance application be approved, without regard to the required minimum setbacks, it may lead to similar requests by owners of surrounding properties.

Therefore, considering the foregoing facts, the Planning Director has 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

This variance request is therefore denied.

The Planning Director's decision is final, except that within thirty days after the date of the written decision, the applicant may appeal such action to the Board of Appeals. Enclosed for your convenience is a General Petition For Appeal Of Decisions By Planning Director.

Should you have any questions, please feel free to contact Rodney Nakano of this department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

RKN:pak

P:\WP60\RODNEY\2001-1\VARMarstonDeny.doc

Enclosure

Mr. Richard S. Marston

Page 5

March 17, 2001

cc: Department of Public Works, Engineering Division
Real Property Tax Office
Department of Health