

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)
by)
GEORGE NORWOOD)
from)
MINIMUM FRONT YARD AND SHORELINE) VARIANCE NO. 539
SETBACK REQUIREMENT AND PARKING)
IMPROVEMENT REQUIREMENTS)
in)
Holualoa 1st and 2nd,)
North Kona, Hawaii)
_____)

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on July 13, 1978, considered the application of GEORGE NORWOOD for a variance from Article 9, Section 7 and Article 26, Section 6 of Chapter 8 (Zoning Code), Hawaii County Code, as amended, and from Article 26, Section 7 of the Zoning Code as well as Rule 8 of the Planning Commission, "Rules and Regulations Relating to Shoreline Setback," more specifically to allow the construction of a two (2) unit apartment structure on 4,706 square feet of land with a front yard setback of twelve (12) feet in lieu of the minimum requirement at twenty (20) feet stipulated in the Resort-1,250 square foot (V-1.25) zoned district, a twelve (12) foot shoreline setback in lieu of the minimum requirement of twenty (20) feet, and a grassed hollow tile parking back-up area in lieu of the requirement of an all-weather dust free paved surface at Holualoa 1st and 2nd, North Kona, Hawaii, Tax Map Key 7-6-14:07.

The Commission has found:

That there are unusual circumstances applying to the subject property which do not generally apply to surrounding properties or improvements in the same zoned district. The parcel involved consists of 4,706 square feet of land and is non-conforming with respect to the 15,000-square foot minimum area requirement of the Resort zoned district. The parcel is also generally triangular in shape. Due to the shape of the parcel, the buildable area narrows towards the apex of the triangle. This configuration results in a buildable area which is relatively quite restrictive in terms of practical usable space. The standard rectangular design of living areas is not easily adaptable to the shape and area of the subject parcel.

The proposed structure has been designed in such a way that some of the basic restrictions of the parcel's shape and size have been overcome, and the side and rear yard setbacks will be complied with. In the proposed plans, however,

the structure encroaches into the front yard setback area in order that a minimal living area can be provided. The shape and size of the parcel are determined to be unusual circumstances which are not generally found in surrounding or similarly zoned properties. In addition, these are of such a nature that compliance with all of the setback requirements would deprive the petitioner of property rights. The purpose of the variance provisions of the Zoning Code is to accommodate those circumstances in which the strict and literal enforcement of the law would result in undue hardship for the petitioner. In this particular case, the application of all required setbacks would result in a structure of small size and odd shape and would obviously interfere with the best manner of development and use of the subject property.

Further, approval of the front yard setback variance will not be inconsistent with the general purpose of the zoned district or the purpose and intent of the Zoning Code. The intent of the setback provisions of the Zoning Code is to assure that adequate light, air and circulation is available for structures and between properties. In this particular case, encroachment into the front yard setback area will not interfere with light, air and circulation for the proposed development or other adjacent developments, especially in that side and rear yard setbacks will be met. Approval of this aspect of the variance request is thus not expected to be materially detrimental to the public welfare or to improvements or property rights related to property in the near vicinity.

The protrusion of the second floor lanai into the shoreline setback area is also not expected to be materially detrimental to the public welfare nor directly contrary to the purpose and intent of the shoreline setback provisions. The lanai will be approximately nine feet above grade and will be open in character. It should not be subject to high seas or otherwise endangered by ocean actions. The nature of the proposed improvement is not contrary to the intent of the shoreline setback regulations, which is to prevent disturbance of natural shoreline processes and massive development along the shoreline as well as to protect shoreline structures from high wave and tsunami damage. As proposed, the lanai will essentially have no effect on the shoreline setback area in that the major impact resulting from development of the subject property will be from the proposed structure which otherwise complies with setback requirements in this area of the parcel.

In addition, it should be pointed out that the property lines of the subject parcel abut the shoreline for a distance of approximately 16 feet. The character of the parcel is not essentially that of fronting on the shoreline. The configuration and size of the parcel compound the unusual circumstances of the parcel. By encroaching into the front yard setback area, the projection of a portion of the proposed structure into the shoreline setback area is minimized.

In terms of the parking improvements proposed by the petitioner, it is determined that the provision of grassed hollow tile for the turnout area essentially is consistent with the provision of an all-weather, dust free surface. The use of the proposed surface in lieu of asphalt pavement will accomplish the same goal of providing a usable, nuisance-free parking improvement. Given the unusual circumstances of the size and shape of the parcel, the petitioner's intent to utilize the parking turnout area as an entrance way to the proposed structure will promote the best manner of development of the subject property while still complying with the parking requirements of the Zoning Code. Except for the turnout area, all other parking related improvements will be in compliance.

In addition, the scale of the proposed development as well as the nature of it is such that the proposed grassed hollow tile turnout area will not have any adverse effects on other properties. The proposed development consists of two residential units which will generate traffic of a domestic, low volume nature. In this particular case, the provision of the required number of parking spaces and the relief of improvement requirements for the turnout area is determined to be more consistent with the provisions of the Zoning Code than vice versa. Such a proposal is expected to create less of a traffic hazard on Ali'i Drive than other alternatives to relief from the parking requirements which could be pursued to resolve the difficulties encountered by the unusual circumstances of the subject property which have been cited above.

Based on the above, it is determined that approval of the subject request will not be contrary to the purpose and intent of the Zoning Code, will not be detrimental to the public welfare nor injurious to property rights related to property in the near vicinity, and will not constitute a grant of personal or special privilege inconsistent with the limitations upon properties in similarly zoned districts.

Therefore, the Commission hereby grants to the applicant a variance to allow the construction of a two (2) unit apartment structure on 4,706 square feet of land with a front yard setback of twelve (12) feet in lieu of the minimum requirement of twenty (20) feet stipulated in the Resort-1,250 square foot (V-1.25) zoned district, a twelve (12) foot shoreline setback in lieu of the minimum requirement of twenty (20) feet, and a grassed hollow tile parking back-up area in lieu of the requirement of an all-weather dust free paved surface pursuant to the authority vested in it by Article 1, Section 7 of the Zoning Code and by Section 205-35, Hawaii Revised Statutes and Rule 8.8 of the Planning Commission, "Rules and Regulations Relating to Shoreline Setback" subject to the following conditions:

1. That the petitioner or his authorized representative shall submit plans for plan approval within one year from the effective date of the Variance Permit.

2. That the proposed development shall conform to the representations made by the petitioner and the plans submitted with the application.
3. That construction of the proposed development shall commence within one year from the date of receipt of final plan approval and be completed within two years thereafter.
4. That should any archaeological or historical sites or remains be found during land preparation activities, work shall immediately cease and the petitioner or his authorized representative shall notify the Planning Department. Work shall not resume until a review and clearance of the affected site or sites has been obtained from the Planning Department.
5. That all other applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from July 13, 1978.

Dated at Hilo, Hawaii, this 16th day of August, 1978.



WILLIAM F. MIELCKE, CHAIRMAN
Planning Commission

