

CERTIFIED MAIL

November 23, 1982

Mr. D. E. Delagrammaticas
77-6609 Kuakini Highway
Kailua-Kona, HI 96740

Dear Mr. Delagrammaticas:

Variance Application (V82-42)
Variance from Minimum Sideyard Setback Requirement
Tax Map Key 7-7-14:11

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow a sideyard setback ranging between 6 feet and 9 feet 6 inches for an existing single family dwelling in lieu of the minimum sideyard setback of 10 feet as required in the Single Family Residential (RS-10) zoned district in the Kuakini Heights Subdivision, North Kona, Hawaii.

The approval is based on the following:

1. That there are special or unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property.

According to the Department of Public Works, Building Construction and Inspection Division, Kona Office, records, a building permit for the existing dwelling was issued on July 1, 1980. Final inspection of the dwelling was granted on October 14, 1980 on Building Permit No. 04403. There is no evidence to show that a foundation inspection was either

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called for by the contractor or made by the building inspector. Therefore, it cannot be conclusively determined whether the error was done by the Contractor, Planning Department or by the Building Inspector. In this particular situation, the petitioner relied upon the knowledge and expertise of the contractor as well as the building inspector. The setback violation which has existed for the last two years cannot be attributed to the petitioners own negligence, as it was not a self-created problem, but one that was passed on to them.

Therefore, the denial of the variance would impose a harsh and undue economic, as well as a design hardship on the petitioner.

2. That there are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the single family dwelling to comply with the minimum setback requirements would be putting excessive demands upon the petitioner, when a more reasonable solution is available. This relocation alternative would be unreasonable and burdensome to the petitioner as it was not a self created problem, but one which may have been attributed to a possible contractor and governmental error that was made two years ago. The action of the petitioner to legitimize the illegal structure is one which is being done of their own accord. In view of the above consideration, any other alternatives in resolving this issue would only be putting excessive demands upon the petitioner when a more reasonable alternative is available.
3. That the granting of the variance shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the General Plan. The intent and purpose of the setback requirements are to ensure that light, air, physical and visual circulatory functions are available between structures and property lines.

In this particular application, the location of the existing dwelling will still provide for these functions, although not meeting the minimum requirements of the Zoning Code. Additionally, the existing sideyard setbacks of 6 to 9 feet would still employ and afford the air, light, and circulatory functions that is the basis of requiring


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setbacks. It should be noted that the approval of the variance is one which is made in view of the special circumstances concerning the dwelling. In view of the above issues, we have also determined that the granting of the variance will not be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the area's character or to adjoining properties.

Based on the foregoing, the Planning Director has concluded that this request be approved.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. FUKÉ
Planning Director

RHY:lgv

cc: Mr. Colin Love
Planning Commission