

CERTIFIED MAIL

February 25, 1983

Ms. Elizabeth M. Kodis  
P. O. Box 535  
Volcano, HI 96765

Dear Ms. Kodis:

Appeal from Planning Director's Denial  
of Variance  
Tax Map Key 1-1-06:11

This is to inform you that at its meeting on February 17, 1983, the Planning Commission voted to sustain your petition for appeal from the Planning Director's denial of your variance request to allow the construction of a garage addition to an existing single family dwelling with a front yard setback of 15 feet in lieu of the minimum requirement of 25 feet at Kezau, Puna.

Based on this decision, your variance application is hereby declared approved. The Planning Commission's reasons are as follows:

1. There are special or unusual circumstances applying 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.

In 1972, the Building Permit was approved for the construction of the existing single family dwelling. Although the minimum front yard setback requirement was 25 feet, the building plans were erroneously granted with a 15-foot front yard setback. In discovering the violation, the petitioner filed a variance application for the retention of the single family dwelling with the 15-foot setback. As part of the application, the petitioner also requested a variance to allow the construction of the

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garage addition utilizing the same front yard setback of 15 feet. While the variance for the retention of the existing single family dwelling was approved, this particular variance, which sought the same setback of 15 feet as that of the dwelling, was denied. The petitioner intends to utilize the same building line for the garage addition as that which was approved for the existing dwelling for economic as well as practical reasons. To deny the variance for the garage addition, while still approving the setback for the dwelling merely because the latter already exists, would appear to be an arbitrary decision. To deny this particular variance would definitely impose undue design hardship on the petitioner.

Further, to deny this variance and require the petitioner to comply with the 25-foot front yard setback would definitely result in the interference with the best use or manner of development of the subject property. Indirectly, the setback problem occurs not because of the petitioner's own negligence, but rather, through the fault of a previous governmental action in the original approval of the Building Permit of the dwelling.

2. There are no reasonable alternatives to resolve the difficulty. The alternative to construct the garage addition without the variance would cause undue design hardships on the petitioner, when other more reasonable alternatives are available. Further, it is felt that the denial of this particular variance, in light of the similar variance request which was granted for the existing dwelling, would not serve as a reasonable alternative in this situation. The acquisition of the property after the dwelling was constructed and the subsequent design problem for the garage addition is not necessarily a self-created one, but results from the previous governmental action in approving the original Building Permit for the dwelling with an inadequate setback.

Therefore, because of these considerations, any design solution which would have to adhere to the minimum setback requirement would be unreasonable and may foreclose any logical and practical options in constructing the garage addition.

Further, since there already exists a water tank to the rear of the proposed addition, the alternative of moving the garage to the rear would necessitate the relocation of the existing water tank. The other alternative of constructing a free-standing garage away from the existing dwelling may not be feasible from a functional standpoint.

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3. The granting of the variance is 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 is to ensure that light, air, physical and visual circulatory functions are available between structures and property lines. For this particular request, as also used as reasons for the approval of the setback variance for the existing dwelling, the location of the proposed addition will still provide for these functions. In view of the above, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the area's character or to adjoining properties.

Approval of this Variance request by the Planning Commission is subject to the following conditions:

1. The petitioner or its authorized representative shall comply with all of the stated conditions of approval.
2. Construction of the garage addition commence within one year from the effective date of the Variance Permit and be completed within one year thereafter.
3. All other applicable rules, regulations, and requirements be complied with.

Should any of the foregoing conditions not be met, the Variance Permit shall be automatically voided.

Should you have any questions, please feel free to contact the Planning Department at 961-3288.

Sincerely,

/s/ ROY KAGAWA

for CLYDE IMADA  
Chairman, Planning Commission

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cc: Corporation Counsel  
Building Division, Public Works Department

bcc: Plan Approval Section

CERTIFIED MAIL

October 13, 1982

Ms. Elizabeth M. Kodis  
P. O. Box 535  
Volcano, HI 96785

Dear Ms. Kodis:

Variance Application - (V82-34)  
TMK: 1-1-08: 11

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

1. That there are no special or unusual circumstances which apply to the subject property and exist to a degree that deprives the 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 property. There are no topographical or other special or unusual circumstances related to the property which particularly differentiates this parcel from others in the area. The subject property is relatively flat and there is still ample room for expansion. There is approximately 8,168 square feet of buildable area, exclusive of setbacks, on this portion of the property. There has been no evidence found by the Planning Department or presented by the petitioner showing either a deprivation of substantial property rights or interference with the best use or manner of development of the subject property. The petitioner's claim that the building permit for the dwelling was issued in error cannot be confirmed as the approved plans do not exist on file and none can be found by the petitioner. As such, it cannot be ascertained as to exactly whose fault it was, as to how the construction error occurred. Be that as it may, justification for the existing building can be found. However, there is no evidence to suggest that the plans were approved in 1972 with the proposed garage addition. If it did, favorable

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consideration for this variance would be appropriate. Some amount of detrimental reliance and resultant development rights may have been conferred to the property owner.

Without such evidence, it is difficult to find unusual hardship for this garage addition. The situation would be similar to having one comply with a new law. One must comply with the new law, in spite of what he or she did or enjoyed in the past. One of the few extenuating circumstance would be when certain development rights were confirmed. There is no evidence to show that such was the case here.

2. There are other reasonable alternatives in resolving the difficulty. In fact, there are viable alternatives which would allow the petitioner to construct a garage without necessitating a variance.

Many alternative designs for an attached or detached garage with a covered walkway to the existing dwelling are available in terms of design solutions. These design solutions would provide for a convenience to the petitioner in having a functional relationship between the dwelling and the garage. The specific design, of course, is a choice for the owners to make. The point is that the building parameters established by the Zoning Code leave ample space for additions to the existing dwelling on this property.

Further, the petitioner is already enjoying property rights related to the property as there is an existing single family dwelling on the property. In requesting the variance, the petitioner seeks to increase the rights related to the property through the construction of a garage addition encroaching into the front yard setback. This additional increase, without any evidence showing a deprivation of existing property rights, would serve to violate the intent and purpose of granting variances. It should be pointed out that other landowners in the Mauna Loa Estates subdivision have been able to develop single family dwellings within the limitations imposed by the Zoning Code.

Since there are no special or unusual circumstances which require special design considerations for the proposed garage addition, it is determined that the approximate buildable area of 8,168 square feet is ample enough to design and construct the garage addition and still meet with the minimum setback requirements of the Zoning Code.

3. Should the variance be approved, it would be inconsistent with the general purpose of the district, the intent and purpose of

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this Chapter, and the County General Plan. The general intent and purpose of the minimum setback requirements by the Zoning Code was to ensure that adequate light, air, physical and visual circulatory functions between dwellings and property lines. Thus, any requests for reduction of these areas in any amount, without any special or unusual constraints related to the land, would be violative of the Zoning Code.

Based on the foregoing, the variance is viewed not to be consistent against the criteria test for a variance and would not be consistent with the general purpose of the Zoning District and the intent and purpose of the General Plan. Furthermore, the granting of a variance without any substantiation of proof in conjunction with the criteria test for variances would be setting precedences for the rest of the subdivision to request for the same type of relief from these standards.

Finally, while it could be construed that the impact of allowing the variance to the petitioner may be minimal or none at all, the cumulative impact of subsequent similar variances without legitimate hardships cannot be ignored. This consequence, in this instance, must be given a higher priority and must override the personal wishes or desires of the individual in favor of the intent and purposes of the Zoning Code and the welfare of the general public.

Should you have any questions, feel free to contact Keith Kato or Royden Yamasato of this office at 961-8288.

Sincerely,



SIDNEY FUKU  
Planning Director

RHY:db

cc: Planning Commission