

CERTIFIED MAIL

February 14, 1983

MJM Development Corp.
76-6241 Alii Drive, Suite 102
Kailua-Kona, HI 96740

Gentlemen:

Variance Application (V82-50)
Variance from Minimum Front and Rear Yard Setback Requirements
Tax Map Key 7-6-15:15

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 the construction of an office building with a front yard setback of fifteen (15) feet and a rear yard setback of ten (10) feet as amended in lieu of the minimum twenty (20) feet front and rear yard setback as required in the Resort (V-1.25) zoned district in Holualoa 1st and 2nd Partition, North Kona, Hawaii.

The approval is based on the following:

VARIANCE CRITERIA NO. 1

There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would interfere with the best use or manner of development of that property.

According to the County Tax Office, the subject property was subdivided prior to 1948. As such, it is a "grandfathered" parcel. Because it was subdivided prior to the present Subdivision Code, it also is considered a non-conforming lot in

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terms of lot size. The parcel which was zoned for "Resort" in 1967 also did not take into consideration the fact that it would be a non-conforming lot relative to the zoning question. Consequently, the uses permitted within the context of the "Resort" zoned district were also applicable to the subject property. The minimum lot size in the Resort (V) zoned district is 15,000 square feet. The minimum average lot width is 90 feet. After applying the minimum setbacks for a two story building in a typical 15,000 square foot lot (100 feet by 150 feet) the net buildable area results in 8,800 square feet or 58.66 percent of the lot.

For comparison purposes, after applying the minimum setbacks for a two story building in a typical 7,500 square foot lot (75 feet by 100 feet) the net buildable area results in 3,850 square feet or 51.33 percent of the lot.

After application of the minimum setbacks on the subject property, the net buildable area results in approximately 982 square feet or 12.85 percent of the lot. Relative to the typical 15,000 square foot lot, there is a difference of 45.81 percent between the net buildable areas of both lots. In reference to the 7,500 square foot lot, there is a difference of 32.96 percent between the net buildable areas. At the location of the proposed building, the imposition of the minimum setbacks leave an area of 6 feet - 6 inches in depth and 56 feet in width.

Therefore, these considerations effect unusual circumstances with respect to the development constraints of the property. These constraints contribute to a deprivation of substantial property rights as well as interfere with the best use of manner of development of the subject property.

VARIANCE CRITERIA NO. 2

There are no other reasonable alternatives that would resolve the difficulty.

The alternative to develop the property without the variance would cause undue design hardships on the petitioner, when other more reasonable alternatives are available. Furthermore, it is determined that the denial of the variance would not serve as a reasonable alternative in this situation. The depth 6 feet - 6 inches after applying the front and rear yard setbacks is not a reasonable area in which to construct a reasonable office building. The subject property is recognized

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as a "grandfathered" subdivision and a legal parcel and is not a fault of the petitioner. The development design problem is not a self-created one, but results from the application of the Zoning Code's minimum front and rear yard setback requirements on a non-conforming lot.

Therefore, because of these considerations, any design solution which would have to adhere to the minimum Zoning Code's front and rear yard setback requirements would be unreasonable and foreclose any options in developing the property for the proposed office building.

However, the proposed design which provides for a five (5)-foot rear yard setback is not determined to be reasonable in view of its relationship to the Holualua Gardens development on that side of the property. If the proposed development were to be constructed with a five (5)-foot rear yard setback, the architectural and structural design of the building would change drastically as indicated by the Department of Public Works requirements for "fire resistive" construction. Consequently, in order to have the proposed building be more aesthetically and physically compatible to the adjacent development, it is felt that the minimum front yard setback of fifteen (15) feet and a ten (10)-foot rear yard setback would be more appropriate in meeting with the light, air, physical and visual circulatory functions for setbacks. This would be reasonable in light of the constraints and circumstances being applied to the property. Any other design alternatives in resolving this issue would only be putting excessive demands upon the petitioner, when a more reasonable solution is available.

VARIANCE CRITERIA NO. 3

The variance shall 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 and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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 is to ensure that air, light, physical and visual circulatory functions are available between structural developments and property lines. In this particular

application, the amended design solution will still provide a reasonable area for these functions, although it would not meet the minimum requirements imposed by the Zoning Code. Nevertheless, the amended front and rear yard setbacks would still employ and afford the air, light, and circulatory functions that is the basis of requiring setbacks. Therefore, the analysis of these issues has also concurred 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.

The variance request is approved, subject to the following conditions:

1. That the petitioner or its authorized representative shall be responsible for complying with all stated conditions of approval.
2. That revised plans meeting with the approved front yard setback of fifteen (15) feet and rear yard setback of ten (10) feet including a detailed landscaping plan, be submitted for "Plan Approval" within one (1) year from the effective date of approval of the Variance Permit.
3. That the plans submitted for "Plan Approval" shall show the retention and improvements of the existing rock walls on the perimeter of the property and shall be incorporated into the final design of the development.
4. That the construction of the improvements shall commence within one (1) year from the date of receipt of final "Plan Approval" and be completed within ~~two (2)~~ ^{three (3)} years thereafter.
5. That requirements of the Department of Public Works and the Department of Water Supply be complied with.
6. That the State Department of Health requirements be complied with.
7. That all other applicable Federal, State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, this variance shall automatically be voided.

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

Sincerely,



SIDNEY M. FUCE
Planning Director

RHY:lgv

cc: Hamlet C. Bennett
Planning Commission