

CERTIFIED MAIL

April 14, 1983

Mr. Daryl Smith  
HTS Co.  
P. O. Box 5330  
Hilo, HI 96720

Dear Mr. Smith:

Variance Application (V83-6)  
Variance From Expansion of Non-conforming Use  
and Front Yard Setback Requirement  
Tax Map Key 2-1-07:3234

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 824 square feet living, kitchen, dining and bedroom addition to the existing non-conforming single family residential use with a front yard setback of 5 feet-6 inches in lieu of the non-expansion requirement of a non-conforming use and the minimum 20-foot front yard setback requirement in the General Industrial-1 acre (MG-1a) zoned district in the Ocean View Lease Lots Subdivision in Waiakea, South Hilo, Hawaii.

The approval is based on the following:

The subject property is part of the Ocean View Lease Lots Subdivision which was created prior to 1948. The existing dwelling was constructed in the early 1940's prior to the establishment of any building setbacks. The road parcel on the northeast side of the subject property serves as access to the State beachfront parcel. Parcel 35 which also abuts the roadway parcel on its northeastern side presently uses it for driveway access purposes. Both the subject property and parcel 35 could directly access Ocean View Drive however.

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Since this property is only fifty foot wide and siting of the existing structure precludes any possible expansion without encroachment into the building yards, these issues are determined to be special and unusual circumstances and that the denial of the variance would serve to deprive the petitioner of substantial property rights that would otherwise be available and interfere with the best use or manner of development of the property. Consequently, there are no other reasonable alternatives in resolving the difficulty.

The existing dwelling was constructed in the early 1940's and is allowed to continue under the non-conforming provisions of the Zoning Code. To deny the variance and/or require the petitioner to move the dwelling with the constraints and vested rights previously mentioned, would be putting excessive demands upon the applicant, when a more reasonable solution is available.

The granting of the variances for the expansion of the non-conforming single family dwelling use and from the minimum front yard setback requirements as required by the present Zoning Code will not be materially detrimental to the public welfare or cause substantial adverse impact to the area's character or to adjoining properties. The subject property is part of the Ocean View Lease Lot Subdivision which has been developed with single family residential development prior to the adoption of the General Industrial zoning of these properties. Thus, the subject property is permitted under the "Non-conforming" provisions of the Zoning Code to continue the single family residential use. The proposed single family, one story addition will be in character with the rest of the subdivision and not pose any adverse visual or physical impact on these surrounding properties. The 1,824 square feet addition is not one which is considered to be above or beyond a typical single family dwelling type structure.

The two properties which have frontage on the road parcel leading to the shoreline are the only lots which use it for access. As such it functions more as a private driveway. Therefore, from a front yard setback perspective, this is somewhat different from a typical front yard type setback situation. The requirement of the front yard setback in this case, would be negligible as its impact is minimal and does not adversely affect the adjoining property. There is approximately 45 feet between the two single family dwellings fronting the road parcel to the shoreline. This 45 feet distance is determined to be adequate for the intent and purposes for the

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impositions of setbacks. 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. While still affording the air, light and circulatory functions that are the basis of requiring setbacks.

Additionally, if this is to be considered a public access to the shoreline, the 20 feet width affords a reasonable area for this purpose.

In view of the above issues, 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.

Based on the foregoing, the Planning Director has concluded that this request be approved, subject to the following conditions:

1. The petitioner, its assigns or its successors be responsible for complying with all the stated conditions of approval.
2. The petitioner shall secure an approved shoreline survey from the Chairmen of the Department of Land and Natural Resources within one year from the effective date of approval of the variance permit.
3. The petitioner shall be responsible to submit the plans to the Department of Land and Natural Resources for approval prior to submitting of plans for "Building Permit" and this approval to be secured within one year from the effective date of approval of the Variance Permit.
4. A "Building Permit" shall be secured for the proposed single family dwelling addition within one (1) year from the effective date of approval from the Department of Land and Natural Resources and be completed within two (2) years thereafter.
5. That the Department of Public Works requirements shall be complied with.
6. That the State Department of Health requirements shall also be complied with.

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7. That all other applicable State and County rules, regulations and requirements shall be complied with.

Should the petitioner, its assigns or its successors fail to comply with the above conditions, the variance shall automatically be deemed void.

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

Sincerely,



*for* SIDNEY M. FUKÉ  
Planning Director

RHY:lgv

cc: Glenn Taguchi, DLNR