

#134

CERTIFIED MAIL

April 14, 1983

Mr. Floyd Watson
6827 E. McKenzie
Fresno, CA 93727

Mr. Raymond Wizbowski
10326 N. Fowler Avenue
Clavis, CA 93612

Dear Messrs. Watson and Wizbowski:

Variance Application (V83-7)
Variance From Minimum Rear Yard Setback
Tax Map Key 7-7-17:42

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 rear yard setback of 12.96 feet for an existing single family dwelling in lieu of the minimum 15 feet required in the Single Family Residential - 7,500 square feet (RS-7.5) zoned district in the White Sands Beach Estates Subdivision in La'aloa 2nd, 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.

The White Sands Beach Estates Subdivision is a "grandfathered" subdivision being created prior to 1948. Although there is no evidence of a possible governmental

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error in the approval of the construction of the dwelling in 1972, there is no record of the approved 1972 construction plans on file in order to determine if an error was made. Therefore, it cannot be conclusively determined whether the error was done by the previous owner, contractor, Planning Department or by the Building Inspector. Nevertheless, one of the petitioners, Mr. Raymond Wizbowski, is purchasing the subject property and dwelling 11 years after its construction. He assumed that its siting and construction complied with all governmental regulations. However, during the escrow procedure, a field survey was made of the property lines and it was found that the existing dwelling encroached into the rear yard setback. The setback violation of the existing dwelling cannot be attributed to the petitioner's 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 an 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 an unreasonable solution. This relocation alternative would be unreasonable and burdensome to the petitioner, as it was not a self-created problem, but one which was attributed to a possible governmental error made 11 years ago. The action of the petitioner to legitimize the structure is one which is being done of their own accord. In view of the above considerations, any other alternatives in resolving this issue would be putting excessive demands upon the applicant when a more reasonable solution is available.
3. That 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 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 with the 12.96-foot rear yard, which is an 8.6 percent deviation, will still provide for these functions, although it would not meet the minimum as required by the Zoning Code. Additionally, the existing location would still employ and afford the air, light and circulatory functions that is the basis of requiring setbacks. However, it should be noted that the special circumstances concerning the existing single family dwelling does affect the approval of the variance for the

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dwelling. It should also be clarified that the determination of the qualification of the setbacks for the dwelling is one which is made in view of the special circumstances concerning the dwelling.

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.

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

Sincerely,



for SIDNEY M. FUCE
Planning Director

RHY:ds

cc: Don McIntosh
Planning Commission