

CERTIFIED MAIL

July 29, 1983

Mr. Mark Van Pernis
Gallup, Van Pernis, Shaughnessy
& Fagundes
Hualalai Center
P. O. Box 1837
Kailua, HI 96740

Dear Mr. Van Pernis:

Variance Application (V83-16)
Applicant: James Hessler
Tax Map Key 7-5-19:29

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

1. 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 the petitioner has already constructed a new garage on the north side of the subject property. The net buildable area on this portion of the property is approximately 3,346 square feet. The developed portion of the property amounts to approximately 3,321 square feet. Of this 3,321 square feet, approximately 1,037 or 31 percent of the developed area is situated within the front and sideyard setback area of the property.

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We have found no evidence on the property or anything presented by the petitioner that shows either a deprivation of substantial property rights or interference with the best use or manner of development of the subject property which would justify the approval of the variance. The plans which was approved in 1981 did not include any work on the existing garage. If it did, favorable 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 evidence of such extenuating circumstances, it is difficult to find unusual hardship for this garage reconstruction and enclosure. 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 circumstances 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 has been action completed by the petitioner to show that there are viable alternatives which would allow the petitioner to construct a garage without necessitating a variance.

In 1981, the petitioner constructed a new garage building which serves the existing single family dwelling.

Further, the petitioner is already enjoying property rights related to the property as there is an existing single family dwelling on the property. The net buildable area of the property is approximately 3,346 square feet. The developed area on the property is 3,321 square feet of which 1,037 square feet is situated within the front and side yard setbacks of this property. In requesting the variance, the petitioner seeks to increase the rights related to the property through the reconstruction and enclosure of the existing garage which exceeds normal repair and maintenance and which encroaches into the front and side yard setbacks. 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 same general area have been able to develop single family dwellings within the limitations imposed by the Zoning Code.

There are no special or unusual circumstances which require special design considerations for the reconstruction of the existing garage. The on-site inspection showed that the subject area has already been partially reconstructed and that a concrete berm installed at the entrance of the area being designated as an existing garage. Additionally, the petitioner knowingly proceeded with the reconstruction of the existing garage portion of the dwelling cognizant of the fact that no approvals or permits were issued. The fact that the existing building has been partially completed should not be given any special considerations. If this is done, we would be sanctioning violation of the zoning rules as a means of achieving personal developmental goals. The petitioner was completely aware of the consequences and the requirements of the Zoning and Building Code as early as December 1980, but failed to make any efforts to comply with the Zoning Code requirements. This disregard of the law by the petitioner in this instance should not be condoned by the variance procedure. Although the economic considerations will be detrimental to the petitioner, he was aware of the consequences of his actions if he continued the work on the dwelling without the proper permits and approvals. Thus, the reasonableness of asking that the petitioner remove the reconstructed portion of the building is not deemed to be an overly excessive and unreasonable alternative in resolving this matter.

3. Should the variance be approved, it would be inconsistent with the general purpose of the district, the intent and purpose of 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. 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. The location of the existing garage is on the front property line which contributes to the traffic safety concerns for driveways along this portion of Allie Drive. The direct off-street design does not give any opportunity for sight distance views when egressing onto Allie Drive. Whereas the minimum 20-foot front yard setback would provide for this type of function. As such, the approval of the variance would perpetuate this dangerous traffic condition and is determined that it would be materially detrimental to the public welfare or cause substantial adverse impact to the area's character and to the adjoining properties.

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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 area to request for the same type of relief from these standards.

Based on the above findings, the Planning Director denies the variance request.

The Director's decision is final, except that within ten (10) working days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100.00); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within ten (10) working days after notice of action, the applicant or an interested party as defined in Section 7.05 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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Should you have any questions on this matter, please feel free to contact our office at 961-8288.

Sincerely,



SIDNEY M. FUKÉ
Planning Director

RHY:gs

cc: Planning Commission
James Hessler