

CERTIFIED MAIL

August 1, 1983

Mr. David S. Matson  
5702 Ironwood Street  
Rancho Palos Verdes, CA 90274

Dear Mr. Matson:

Variance Application (V83-19)  
Variance From Minimum Side Yard Setback Requirement  
Tax Map Key 1-4-53:93

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 an existing single family dwelling with a 1.70-foot side yard setback and a 1.70-foot clearspace yard in lieu of the minimum 8-foot side yard setback and minimum 4-foot open clearspace as required in the Single Family Residential zoned district, in the Nanawale Estates Subdivision, Puaa, Puna, 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 Nanawale Estates Subdivision was approved in 1960. Although there is no evidence of a possible governmental error in the approval of the construction of the dwelling in 1974, there is no record of the approved 1974 construction plans on file in order to determine who and how the error occurred. Therefore, it cannot be conclusively determined whether the error was done by the contractor, Planning Department or by the Building Inspector. Nevertheless, the petitioners, Mr. and Mrs. David Matson had purchased the subject property and had the contractor build a dwelling on the property 3 months after

Mr. David S. Matson  
Page 2  
August 1, 1983

the purchase of the property. They assumed that its siting and construction complied with all governmental regulations. However, as a result of a new field survey of the property lines, it was found that the existing dwelling encroached into the side 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 9 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 1.70-foot side yard, will still provide for these functions, although it would not meet the minimum as required by the Zoning Code. The fact that the dwelling on the adjacent lot (parcel 94) also followed the wrong property line when it was constructed is a third party involvement. Therefore, although, there is only 1.70 feet from the side property, the aforementioned circumstances give credence to the existing location which still employs and affords a measure of the air, light and circulatory functions that is the basis of requiring setbacks.

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.

Mr. David S. Matson  
Page 3  
August 1, 1983

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

1. The petitioner, its assigns or successors, shall be responsible for complying with all conditions of approval.
2. All future additions, renovations and improvements on the subject property shall be in conformance with the requirements of the Zoning Code. Repair and maintenance of the non-conforming part of the dwelling shall be permitted under the non-conforming criteria established in the Zoning Code.
3. All other State and County rules, regulations and requirements shall also be complied with.

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

Finally, since the Planning Department did receive a letter of objection to the variance, we have the legal responsibility to inform the "interested party" that they do have a right to appeal the Planning Director's decision.

Chapter 25 (Zoning Code), Section 25-27 allows any "interested party" to request that the Planning Commission review the Director's action. Such request must be made within ten working days after notice of the Director's decision and shall be in writing containing a statement of its grounds.

Therefore, the variance will not be effective until after the ten-day "appeal period" has passed and if no request is made by the "interested party." Should the "interested party" make a request, we shall inform you of the procedures that must be complied with.

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

Sincerely,



SIDNEY M. FUKÉ  
Planning Director

RHY:gs

cc: Planning Commission  
Donald James Murray  
Gerald A. Smith