

CERTIFIED MAIL

August 1, 1983

Mr. Howard Konanui
P. O. Box 1398
Pahoa, HI 96778

Dear Mr. Konanui:

Variance Application (V83-20)
Variance From Minimum Side Yard Setback Requirements
Tax Map Key 1-4-53:94

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 1.86-foot side yard setback and zero open clearspace yard in lieu of the minimum 8-foot side yard setback and minimum 4-foot open clearspace yard 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 Unit 1, 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 how and who the error occurred. Therefore, it cannot be conclusively determined whether the error was done by the previous owner, contractor, Planning Department or by the Building Inspector. Nevertheless, the petitioners, Mr. and Mrs. Howard Konanui, purchased the subject property and dwelling three years after its construction. They assumed

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that its siting and construction complied with all governmental regulations. However, a new field survey made in November of 1982, 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 contractor's or 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. The alternative of purchasing portions of the adjacent property for a consolidation and re-subdivision has been nullified by the refusal of the adjacent landowner to negotiate on this matter. 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 will still provide for these functions, although it would not meet the minimum as required by the Zoning Code. The dwelling on the adjacent lot (parcel 93) also followed the wrong property line when it was constructed. Therefore, physically, there is 25 feet between the two dwellings, which would more than meet the minimum 8 feet sideyard setbacks for these two lots. In addition, because of the encroachment of the overhang into parcel 93, an air easement document will be required as part of the variance approval. Thus, the existing location would still employ and afford the air, light and circulatory functions that is the basis of requiring setbacks.

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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.

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. A site plan showing the location of the air easement between Lot 216 and 217 shall be submitted for the official file with the Planning Department.
3. 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.
4. 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.

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

Sincerely,



SIDNEY M. DUKE
Planning Director

RHY:gs

cc: Planning Commission
Donald James Murray