

CERTIFIED MAIL

October 3, 1983

Mr. Frank Corkran
P. O. Box 2248
Kailua-Kona, HI 96740

Dear Mr. Corkran:

Variance Application (V83-28)
Variance From Minimum Rear Yard Setback Requirements
Irene Croft
Tax Map Key 7-5-25:30

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 the construction of a new single family dwelling with a 15-foot rear yard in lieu of the minimum 25-foot rear yard setback required in the residential-agricultural zoned district in the Kona Orchard Subdivision, Puapuaanui, North Kona, Hawaii.

The approval is based on the following:

Special and Unusual Circumstances

The subject property is moderately steep in character, thus to provide an area for the construction of the proposed single family dwelling, a grading plan was made and submitted to the Department of Public Works for review and approval. A copy of the grading plan was also distributed to the Planning Department for its review in accordance with the applicable chapters of the Hawaii Revised Statutes or County General Plan. The grading plans which had indicated the location of the dwelling site with a 15 foot setback from the east property line was approved by the Planning Department and the Department of Public Works and a grading permit was issued. In the approval of the grading

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plans, there was no indication of the required setbacks, nor any indication that the proposed dwelling site did not meet the minimum setback requirements. However, when, the petitioner applied for a building permit, those plans were stamped indicating a 25-foot rear yard setback on the east property line. Thus, there was an apparent conflict between the approval of the two plans for the same development. Inasmuch as the grading plan was the first step in the construction phase, the petitioner prepared the property according to the approved grading plans and proceeded to construct the dwelling accordingly. At a later date, the Department of Public Works indicated to the petitioner that the siting of the dwelling did not conform to the approved site plan issued with the Building permit. At this point in time, the foundation slab was constructed and the building construction had commenced. The petitioner had concluded that dwelling site had conformed to all approved plans and that she could utilize this as a criteria for the development of the property. As such, there exists evidence and circumstances of governmental error which imposes an unreasonable hardship on the petitioner to construct the proposed single family dwelling as required. Thus, we have concluded that these are special and unusual circumstances which contributes to deprivation of the petitioner's property rights and obviously interferes with the best manner of development of the property.

Based on the special and unusual circumstances cited above, we have also determined that if the variance were to be denied, the petitioner would be deprived of property rights which would otherwise be available and to a degree which would inhibit the best manner of development of the subject property.

ALTERNATIVES

The petitioner does have other design alternatives. However, the reasonableness of these alternatives have to be weighed against the physical, visual and social impacts that the proposed relief may have in this area. The proposed relief will not pose any physical, visual or social impacts because of the nature of the single family dwelling use in this particular situation. Additionally, the economic impact to the petitioner is a major consideration because of the excessive redesign and regrading and reconstruction costs if the variance were to be denied. The economic consideration would have to be viewed in two respects. The first is government's oversight in not informing the petitioner of the rear yard setback discrepancy in

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the approval of the grading plan which showed the location of the proposed dwelling. Secondly, the location of the dwelling on the grading plan and building permit site plan was the same but the determination of the required setback requirements was imposed only on the building permit site plan. The petitioner's alternative of relocating the proposed dwelling to meet with the 25-foot rear yard setback, in this particular instance would be unreasonable and excessive under the circumstances. Therefore, although other alternatives may be available, we have determined that the most reasonable alternative under the existing circumstances is the one proposed by the petitioner. Based on these considerations, we have determined that the denial of the variance would foreclose all of the petitioner's options, when a more reasonable solution is available.

INTENT AND PURPOSES

The intent and purpose of the setback requirements is to ensure that air, light, physical and visual circulatory functions are available between structural developments and property lines. It is a regulatory tool which is also used in determining design compatibility and functional solutions. In this particular application, the proposed design solution will still provide a reasonable area for these functions, although it would not meet the minimum requirements as was imposed. The property's south boundary abuts two rear yards in the Kona Kai Opuia subdivision. As such, this parcel does not fall into the category of the typical interior and rectangular subdivision lot. The distances from the east side property lines is determined to be equal to and compatible with the normal Agricultural-Residential setback requirements given the circumstances in this particular situation. The proposed 15-foot rear yard setback from the east property line would still employ and afford the air, light, and circulatory functions that is the basis of requiring setbacks. Thus, the 15-foot rear yard setback being granted for this variance will also ensure that the visual, physical and social impacts to the surrounding properties are minimized to the point where it should have a minor rather than a major impact on the area.

Also, since government did not clarify or coordinate the imposition of the regulatory setback requirements, it would be unreasonable and excessive to impose such conditions upon the petitioner at this late date.

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Consequently, we have determined that the granting of the variance shall be consistent with the general purpose of the zoning district, the intent and purposes of the Zoning Code and the General Plan. The analysis of the above issues also has concurred that granting of the variance will not 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 successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The proposed dwelling be sited according to the approved grading plans.
3. The construction of the proposed dwelling shall commence and be completed within two years from the effective date of the variance permit.
4. All other applicable State and County rules and regulations be complied.

Should any of the above conditions not be complied with, the variance shall automatically be deemed void.

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

Sincerely,



SIDNEY M. DUKE
Planning Director

RHY:smn

cc: Colbert Nozaki
Planning Commission
Irene Croft c/o Frank Corkran

Letter also sent to (See attached List)