

CERTIFIED MAIL

October 26, 1983

Mr. Joseph M. Fagundes III  
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Attorneys at Law  
P. O. Box 1837  
Kailua-Kona, HI 96740

Dear Mr. Fagundes:

Variance Application (V83-31)  
Applicants: Urbach/Saiki  
Variance From Side Yard Setback Requirement  
Tax Map Key 7-3-32:25

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 rear yard setback of 18 feet, a side yard setback of 2.71 feet, and open clearspace yard of 0.34 to 0.56 feet in lieu of the minimum 20-foot rear yard setback, the minimum 10-foot side yard setback, and the minimum 5-foot open clearspace yard as required by the Zoning Code.

The approval is based on the following:

Special and unusual circumstances apply to the subject real property which interferes with the best manner of development of the property. The real property in this instance consists of both the lot and the existing structure. The structure was, however, built without the provision of the necessary setbacks in spite of the verification of the presumed property lines by the builder and prior owner of the property. The petitioners subsequently acquired the real property in its present state.

While it is clear that errors have been made in the development of the subject site, these errors were incurred by the preceding owners subsequent to securing the necessary building permits. In both instances the builder and owner verified to the building inspector the location of the property lines. Apparently these representations made to the building inspectors were in error.

A-17

OCT 27 1983

Mr. Joseph M. Fagundes III  
Page 2  
October 26, 1983

In view of these special and unusual circumstances, the strict enforcement of the Zoning Code provisions would deprive the owner of the use of the real property as it was at the time of their acquisition and would require the removal of substantial portions of the existing structure. In view of the past history relating to the subject property, it has been determined that the best manner of development of the subject property is to leave it as it presently exists rather than to remove substantial portions of the structure.

The only alternatives available at this point would be the removal of substantial portions of the dwelling to bring the structure into compliance with the Zoning and Building Code requirements or to acquire additional land from the adjacent property owner. The first alternative is not deemed to be reasonable in as much as it would require the removal of approximately 20% of the subject structure and was caused by persons other than the petitioners. The violation of the Code preceded their interest in the subject property.

The second alternative, i.e. the acquisition of property from the adjacent property owner, would result in the reduction of the lot area below that of the surrounding neighborhood and would require a lot size variance. In addition this would reduce the usable and buildable area of that lot. Based on this, it is determined that the proposed solution, i.e. granting the variance, would be a more reasonable solution under the circumstances.

The granting of the variance will not be inconsistent with the general purpose of the zoning district which in this case allows the development of single family dwellings. While the setback within the property will be less than the Code requirements, it can still provide minimum exterior circulation within the subject site. Further, when the adjacent property on the makai sides develops, there will be an opportunity to create a buffering distance between the structures. At a minimum this space would amount to 12.71 feet. While this minimum distance is less than the normal requirement, it will still allow for a degree of light, air circulation, and privacy which is determined to be adequate under the circumstances.

There may be some effects of this development situation which would be borne, in part, by the adjacent property owner. However, this would not be necessarily so depending on the design of the structural and landscaping development on the adjacent lot. Further, it is expected that regardless of the

Mr. Joseph M. Fagundes III

Page 3

October 26, 1983

manner of development on the adjoining lot that the effect would not be substantial and could be further mitigated by appropriate landscaping within the subject property.

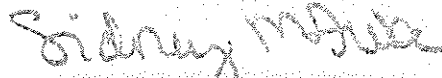
The variance request is approved subject to the following conditions:

1. The petitioners, its assigns or successors, shall be responsible for complying with all conditions of approval.
2. A variance petition from the requirements of the Building Code shall be made to the Board of Appeals within six months from the effective date of this permit.
3. Landscaping for screening purposes, meeting with the approval of the Planning Director, shall be installed along the entire length of the western side of the structure within one year from the effective date of this permit. This landscaping shall have a minimum height of six feet.
4. All other applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, the variance permit shall be automatically void.

Should you have any questions in the meantime, please feel free to contact us at 961-8288.

Sincerely,



SIDNEY M. DUKE  
Planning Director

KK:gs

Enc: Background Report

cc: Planning Commission