

CERTIFIED MAIL

November 9, 1983

Mr. Michael A. Ferrington
Attorney at Law
P. O. Box 3108
Kailua-Kona, HI 96740

Dear Mr. Ferrington:

Variance Application (V83-33)
Setback Variance
Tax Map Key 7-5-22:34, 35, and 36

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 consolidation and resubdivision of three lots with existing structures having side yard setbacks of 4-feet 6-inches and rear yard setbacks of 16 feet on parcel 35, and 13 feet on parcel 34 in lieu of the minimum 10-foot side yard setback with a minimum 5-foot open clearance in the side yard, and a minimum 20-foot rear yard setback with a minimum 14-foot open clearance in the rear yard as required in the multiple family residential zoned district in the Lono Kona Subdivision, Kailua, Hawaii.

The approval is based on the following:

There are unusual circumstances relating to the subject property that would deprive the owners of substantial property rights. The structures located on the lots under consideration were constructed across property lines. Given this situation, should the request be denied substantial portions of the structures would have to be demolished to comply with the minimum setback requirements. Although the result of such action would be in compliance with the land use regulations it would likewise result in a drastic reduction of the property rights. The proposed consolidation and resubdivision does not sanction the straddling of the property lines, but is an attempt to bring the existing situation into closer compliance with the requirements of the Zoning Code.

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The alternatives available include the demolition of portions of the structures, or different lot configurations. As stated above, the demolition of substantial portions of the structures would drastically reduce the property rights available and thus is not considered a reasonable alternative. While alternative property line adjustments are possible they would result in the reduction of the land areas within the lots. As this course of action would bring one or both structures into conflict with the density limitations this course of action is also held to be unreasonable. Therefore, the proposed consolidation and resubdivision is determined to be the most reasonable alternative available.

The granting of the variance will not adversely affect surrounding properties as the setback and clearspace reductions will primarily affect the subject properties. As all property owners subject to this variance have consented to the action it can be assumed that, given the circumstances, the approval of the request will have acceptable impacts upon them.

As far as the properties to the rear are concerned, the resulting rear yard setback of 16 feet should not adversely affect them as compared to the required 20 feet. The degree of deviation in this instance is not substantial and in actuality reflects the situation which has been in place since 1972. Thus, it is determined that the approval of the subject request will not have adverse impacts to the surrounding properties nor be contrary to the purpose of the setback provisions of the Zoning Code.

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. The petitioner shall remove the portion of the building wall which straddles parcels 35 and 36 within one year from the effective date of this variance permit.
3. The petitioner shall remove all walls constructed within the Kalawa Street right-of-way within one year from the effective date of this variance permit.
4. The petitioner shall be responsible for securing the necessary approvals from the Board of Appeals and the State Department of Health.

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5. All other rules, regulations and requirements shall be complied with.

Should any of the the above conditions not be complied with, the Variance Permit shall be automatically void.

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

Sincerely,



SIDNEY M. DUKE
Planning Director

KK:gs

Enc: Background Report

cc: Planning Commission

R. Scott

Ed McBee & Will Laughlin

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