

CERTIFIED MAIL

April 25, 1984

Mr. Robert A. Simms
P. O. Box 1725
Kamuela, HI 96743

Dear Mr. Simms:

Variance Application (V84-10)
Variance from Minimum Rear and Side Yard Setback Requirements
Tax Map Key 8-2-04:16

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

This subdivision was approved by the County in 1949. No building permits were issued for the proposed single-family dwelling which has already been constructed on the subject property. According to the Department of Public Works, the petitioner was informed by the Building Inspector that a building permit was necessary for the already constructed dwelling as far back as 1981. It was also noted at that time that the structure also did not meet with the Zoning Code's minimum setback requirements. There are no topographical or other physical constraints which would not allow the construction of the proposed dwelling on the property without a variance. Although the petitioner claims in his application that the subject property is narrow and this is the only property in the area with an unusual property configuration, there is no evidence that substantiates that the proposed dwelling could not be constructed on other portions of the subject property.

The subject property is relatively level and there are no special or unusual circumstances relative to the property which would require the petitioner to deviate from the minimum setback requirements.

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Based on the foregoing, we have concluded that there are no special and unusual circumstances which unreasonably interferes with the best use or manner of development of the property.

ALTERNATIVES

The petitioner does have other design alternatives. The proposed dwelling could be constructed on the front portion of the property without the necessity of a setback variance.

The design of the dwelling is also traditional in the sense that it is a typical efficiency type dwelling. There is nothing in the design of the dwelling which makes it unique or unusual that would necessitate its deviation from the minimum setback requirements of the Zoning Code. More importantly, the petitioner decided on his own to construct the dwelling without consulting with the County for the proper permits. The use of the variance procedure to resolve a self-imposed difficulty in a relatively developed and residentially zoned area without any special or unusual circumstances is also unreasonable. It should be pointed out that other landowners in the area have been able to develop their properties within the limitations imposed by the Zoning Code. Moreover, the question of reasonableness has to be viewed in terms of the relationship of the three criteria for the granting of a variance and not solely on the reasonableness of the alternative in trying to resolve the difficulty. Thus, although from the petitioner's standpoint the alternative test may seem to validate the approval of the variance, the circumstances and intent and purpose tests do not. Although the petitioner's claim that the narrowness of the lot provides limited options for him, there are other reasonable options in view of circumstances for this situation.

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 resiting of the proposed dwelling can provide for a minimum area for these functions. When the petitioner decided to construct the proposed dwelling in the rear of the property, the air, light and circulatory functions between the subject property and the adjacent properties were diminished. This was a personal decision by the

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petitioner without fully realizing the impact of it on the adjacent properties. Thus, all things being equal, an approval of a setback variance without any special or unusual circumstances related to the land would also not be in keeping with the area's character and could be of some detriment to the adjoining properties.

The setback areas are for the benefit of all of the landowners of a subdivision and not for the purpose of increasing personal property development rights. The use of the variance procedure to enhance a property's development rights would violate the original intent of the setback concept and thus may have a detrimental or adverse effect on the adjoining or surrounding properties.

This variance request is viewed to be inconsistent with the general purpose of the Zoning District and the intent and purpose of the General Plan. Furthermore, the granting of the variance without any substantiation of proof in conjunction with the criteria test for variances would be setting precedence for the rest of the subdivision to request for the same type of relief from these standards.

Finally, while it could be construed that the impact of allowing the variance to the petitioner may be minimal, the impact to the adjacent property and the cumulative impact of subsequent similar variances without legitimate hardships cannot be ignored. This consequence, in this instance, must be given a higher priority and must override the personal wishes or desires of the individual in favor of the intent and purposes of the Zoning Code and the welfare of the general public.

Based on the foregoing, the Planning Director further concludes that the variance application should be denied.

In accordance with the denial decision, the petitioner shall remove or reconstruct the proposed dwelling to the front portion of the property to comply with the minimum setback requirements as stipulated by the Zoning Code.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

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Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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

Sincerely,



SIDNEY M. FUKU
Planning Director

RHY:wkm

Enc: Background Report

cc: Planning Commission (w/enc.)

Mr. Gordon Leslie, Chairman,

Planning, Building & Zoning Committee

Napoopoo-Keel-Honaunau Community Association

Mr. William P. Hodgins

Mr. Earl Leslie, et al

Mrs. Hai Kamakau, Napoopoo-Keel-Honaunau Community Association
DPW, Kona Office, Attn: Colbert Nozaki

bcc: Masa/Billy/PA 2006