

CERTIFIED MAIL

May 23, 1984

HTS Company
761 Kanoelehue Avenue
Hilo, Hawaii 96720

Gentlemen:

Variance Application (V84-12)
Variance from Expansion of a Non-conforming Use and
Front Yard Open Clearspace Yard Requirement
Tax Map Key 2-1-07:34

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 160 square foot open deck addition to the existing non-conforming single family residential use with a front yard setback of 5 feet-6 inches in lieu of the non-expansion requirement of a non-conforming use and the minimum 14-foot open clearspace yard as required by the Zoning Code in the Ocean View Lease Lots Subdivision, Waiakea, South Hilo, Hawaii.

The approval is based on the following:

The subject property is part of the Ocean View Lease Lots Subdivision which was created prior to 1948. The existing dwelling was constructed in the early 1940's prior to the establishment of any building setbacks. The road parcel on the northeast side of the subject property serves as access to the State beachfront parcel. Parcel 35 which also abuts the roadway parcel on its northeastern side presently uses it for driveway access purposes. Both the subject property and parcel 35 could directly access Ocean View Drive however.

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Since this property is only 50 feet wide and siting of the existing structure precludes any possible expansion without encroachment into the building yards, these issues are determined to be special and unusual circumstances and that the denial of the variance would serve to deprive the petitioner of substantial property rights that would otherwise be available and interfere with the best use or manner of development of the property. Consequently, there are no other reasonable alternatives in resolving the difficulty.

The existing dwelling was constructed in the early 1940's and is allowed to continue under the non-conforming provisions of the Zoning Code. Additionally, a previous variance was granted for the expansion of the existing dwelling as well as a setback from the minimum front yard setback requirements. Therefore, to deny the variance and/or require the petitioner to move the dwelling with the constraints and vested rights previously mentioned, would be putting excessive demands upon the applicant, when a more reasonable solution is available.

The granting of the variances for the expansion of the non-conforming single family dwelling use and from the minimum front yard setback requirements as required by the present Zoning Code will not be materially detrimental to the public welfare or cause substantial adverse impact to the area's character or to adjoining properties.

The subject property is part of the Ocean View Lease Lot Subdivision which has been developed with single family residential development prior to the adoption of the General Industrial zoning of these properties. Thus, the subject property is permitted under the "Non-conforming" provisions of the Zoning Code to continue the single family residential use.

The proposed open deck addition to the existing single family dwelling will be in character with the rest of the subdivision and not pose any adverse visual or physical impact on these surrounding properties. The 160 square foot addition is not one which is considered to be above or beyond a typical single family dwelling type structure.

Parcel 34 and 35 have frontage on the road parcel leading to the shoreline. However, only parcel 35 uses it for access. As such it functions more as a private driveway. Therefore, from a front yard setback perspective, this is somewhat

different from a typical front yard type setback situation. The requirement of the minimum clearspace yard in this case, would be negligible as its impact is minimal and does not adversely affect the adjoining property.

There is approximately 45 feet between the two single family dwellings fronting the road parcel to the shoreline. This 45-foot distance is determined to be adequate for the intent and purposes for the impositions of setbacks. 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; while still affording the air, light and circulatory functions that are the basis of requiring setbacks.

Additionally, if this is to be considered a public access to the shoreline, the 20-foot width affords a reasonable area for this purpose.

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 its successors be responsible for complying with all the stated conditions of approval.
2. The petitioner shall secure an approved shoreline survey from the Chairman of the Department of Land and Natural Resources within one year from the effective date of approval of the variance permit.
3. The petitioner shall be responsible to submit the plans to the Department of Land and Natural Resources for approval prior to submitting of plans for "Building Permit" and this approval to be secured within one year from the effective date of approval of the Variance Permit.

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4. A "Building Permit" shall be secured for the proposed open deck addition within one year from the effective date of approval from the Department of Land and Natural Resources and be completed within two years thereafter.
5. That the Department of Public Works requirements shall be complied with.
6. That the State Department of Health requirements shall also be complied with.
7. That all other applicable State and County rules, regulations, and requirements shall be complied with.

Should the petitioner, its assigns or its successors fail to comply with the above conditions, the variance shall automatically be deemed void.

Chapter 25 (Zoning Code), Article 1, Division 4, Section 25.27.0 allows any "interested party" to request that the Planning Commission review the Director's action. Such request must be made within ten (10) working days after notice of the Director's decision and shall be in writing containing a statement of its grounds.

Therefore, the variance will not be effective until after the ten (10) day "appeal period" has passed and if no request is made by the "interested party." Should the "interested party" make a request, we shall inform you of the procedures that must be complied with.

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

Sincerely,



SIDNEY M. FUKÉ
Planning Director

RHY:lgv

cc: Planning Commission
Department of Land & Natural Resources