

CERTIFIED MAIL

August 1, 1984

Dr. William H. Wilson
2894 Pulima Drive
Hilo, HI 96720

Dear Dr. Wilson:

Variance Application (V84-26)
Aha Punana Leo
Tax Map Key 2-2-39:6

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 establishment of a Day Care Center on a 0.89-acre lot in lieu of the minimum 1-acre as required in the Single Family Residential zoned district.

The approval is based on the following:

Special and Unusual Circumstances

The subject property was created prior to the adoption of the present zoning of the property which occurred on December 26, 1968.

The Zoning Code restricting nursery schools in residential-zoned districts to a minimum of one acre requirement was adopted in 1967. Within the Zoning Code, there is no specific definition of a "Nursery School." As such, all categories of commercial child care are defined under "Nursery Schools" in the Zoning Code. The State Department of Social Services, Public Welfare Division's Chapter 891 categorized commercial child care into separate and distinct groups.

Some of these categories are "Family Day Care Homes (FDCH)" which provides care to two and no more than five children, "Group Day Care Homes (GDCH)" which provides care to no more than twelve children and "Group Day Care Centers (GDCC)" which

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provides care to more than twelve children. Each category is required to be licensed by the Department of Social Services rules and regulations for "Family Day Care Homes."

In looking at these different categories, it can be concluded that the term of Nursery School as utilized in the Zoning Code is more in reference to the Group Day Care center definition of the DSSH regulations. Whereas the "Family Day Care Home" and "Group Day Care Home" are more typical of the traditional babysitting type of child care activity. Thus, a distinction can also be made between the necessary land use requirements between the two different categories, mainly in reference to the number of children to be cared for.

These factors constitute special and unusual circumstances which necessitated the application for a variance and if denied would create unreasonable hardship on the petitioner that would deprive them of substantial property rights and interfere with the best manner of development of the subject property.

Alternatives

The petitioners have other alternatives. They could purchase a portion of the adjacent lot to meet with the minimum land area requirement. However, this alternative is not considered to be reasonable because of the child care category being proposed. The purchase of the additional adjacent properties would have no consequence on the proposed Group Day Care Home, which meets with all the minimum requirements of the Department of Social Services.

Therefore, the acquisition alternative would be disruptive and inconsequential for the petitioners to establish the subject use. Thus, although other alternatives may be available, the only reasonable alternative is for the approval of the variance request.

We have also determined that the denial of the variance would subject unnecessary and excessive hardships on the petitioner, when a more reasonable solution is available.

Intent and Purposes

The intent and purpose of the minimum land area requirement is to ensure that air, light, physical, and visual circulatory functions are available to minimize any adverse impacts this conditionally permitted use may have within the Residential zoned districts. It is a regulatory tool which is used to

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require that adequate area is allowed for setbacks, parking, landscaping, pedestrian access, etc.

The proposed Group Day Care Home for not more than 20 children which will be contained within the single family dwelling and the enclosed play area of approximately 1,680 square feet. Thus, the existing development on the 38,768 square foot parcel will still provide a reasonable area for these functions, although it would not meet the minimum land area requirement. The deviation from the one-acre requirement is considered to be minor under the circumstances and the attendant impact of allowing this category of child care use on the property and should not have any major or significant adverse physical, visual or social impact to the surrounding properties.

Although the subject property would not be meeting the minimum land area requirement, in this particular situation the nature and specific child care category use of the site, the compliance with the Department of Social Services licensing requirements and the character of the area does satisfy the intent and purpose of the Zoning Code's minimum one acre requirement.

Additionally, since the nursery school use is a conditionally permitted use in the Residential district, it is also consistent with the district's intent and purpose. The granting of this variance along with the "Plan Approval" requirement will 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.

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.

This 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.

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2. The plans for the proposed Group Day Care Home be submitted for "Plan Approval" within one year from the effective date of approval of the variance permit. In conjunction with Plan Approval, a copy of the Department of Social Services Family Day Care License approval for the proposed use shall be included as part of the Plan Approval submittal.
3. The proposed Group Day Care Home shall be established within one year from the effective date of final "Plan Approval."
4. Any changes from the Group Day Care Home license shall also require approval from the Planning Department for approval to ensure that the change of circumstances do not drastically deviate from the plans as presented.
5. The existing driveway and turn around area shall be paved with an all-weather, dust-free surface in compliance with the requirements of the Department of Public Works within one year from the effective date of approval of the Variance Permit.
6. The requirements of the Department of Health shall be complied with.
7. All other applicable State and County rules and regulations be complied with.

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. FUKÉ
Planning Director

MO:gs

cc: Clyde T. Nekoba, DSSH
Public Welfare Division
Planning Commission