

CERTIFIED MAIL

October 2, 1984

Mr. Don McIntosh, R.L.S.
Kona Surveyors
P. O. Box 2902
Kailua-Kona, HI 96740

Dear Mr. McIntosh:

Variance Application (V84-31)
Gaston and Maria Dedier
Tax Map Key 6-8-18:01

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 6.99-foot side yard setback and a 3.5-foot open clearspace yard in lieu of the minimum 10-foot side yard setback and minimum 5-foot open clearspace yard as required in the Single Family Residential (RS-10) zoned district.

The approval is based on the following:

Special and Unusual Circumstances

That there are special or unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property.

The Waikoloa Village subdivision, Unit 1-D, was approved in April 2, 1971. Although there is no evidence of a possible governmental error in the approval of the dwelling in 1982, the plans on file with the Building Department show that the structure met with the 10'-0" setback requirement. The error occurred during the construction of the home whereby the wrong boundary pin located along Niu-Haohao was used to determine the side property line. This pin is 6.49 feet east of the boundary pin for the subject property. This error was not known until a

Mr. Don McIntoshi, R.L.S.

Page 2

October 2, 1984

re-survey of the lot was made by Kona Surveyors. Therefore, the denial of the variance would impose an undue economic, as well as a design hardship on the petitioner.

Alternatives

There are no reasonable alternatives to resolve the difficulty. The alternative to relocate the single family dwelling to comply with the minimum setback requirements would be an unreasonable solution. This relocation alternative would be unreasonable and burdensome to the petitioner, as it was not a self-created problem, but one which was attributed to a contractor's error when the dwelling was built in 1982. The action of the petitioner to legitimize the structure is one which is being done of their own accord. The alternative of purchasing the adjacent property for a consolidation and re-subdivision has been nullified since the offer to buy a portion or the whole property has been declined by the adjoining property owner. In view of the above considerations, any other alternatives in resolving this issue would be putting excessive demands upon the applicant when a more reasonable solution is available.

Intent and Purpose

The granting of the variance is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan. 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, although it would not meet the minimum as required by the Zoning Code. The adjoining property to the east (TMK: 6-8-18:2) is presently vacant. Should a dwelling be constructed on this property, it would be required to have a 10-foot setback from the side property line (common property line). The physical separation between the existing dwelling and a future dwelling on the adjacent property will be a minimum of 16.99 feet. Thus, the existing location would still employ and afford the air, light, and circulatory functions that is the basis of requiring setbacks.

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 impact to the area's character or to adjoining properties.

Mr. Don McIntoshi, R.L.S.

Page 3

October 2, 1984

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. All future additions, renovations, and improvements on the subject property shall be in conformance with the requirements of the Zoning Code. Repair and Maintenance of the non-conforming part of the dwelling shall be permitted under the non-conforming criteria established in the Zoning Code.
3. All other State and County rules, regulations, and requirements including the Housing Code shall also be complied with.

Should any of the foregoing conditions not be complied with, the variance application shall automatically be voided.

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

Sincerely,



SIDNEY M. FUKÉ
Planning Director

MO:gs

cc: Gaston DeDier
DPW, Building Division