

CERTIFIED MAIL

June 17, 1985

Mr. Mariano Tagalicud  
P. O. Box 1922  
Pahoa, HI 96778

Dear Mr. Tagalicud:

Variance Application (V85-11)  
Variance From Minimum Side Yard Setback Requirement  
Tax Map Key 1-4-53:111

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 6.64 to 7.49-foot setback from the northwest sideyard in lieu of the minimum 8-foot rear yard and minimum 4-foot open clearspace yard setback as required for a non-conforming lot within the Residential (RS-10) zone district. The subject property, which consists of 8,040 square feet, is identified by Tax Map Key 1-4-53:111, lot 260, and is situated on the south side of Nanawale Boulevard, approximately 430 feet west of the Nanawale Boulevard/Kehau Road intersection, Nanawale Estates Subdivision, Unit 1, Puua, Puna, Hawaii.

The approval is based on the following:

1. 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 subject 8,040 square foot parcel was created prior to 1967. Building Permit No. 61703 was granted for the construction of a new three (3) bedroom dwelling. (Note: B. P. indicates "New 4-bedroom dwelling with carport.") Plans approved to construct the existing dwelling are no longer available from the files in the Department of Public Works, Bureau of Building Construction and Inspection. Therefore, it cannot be conclusively determined whether the error was done by the previous owner, contractor, Planning Director or by the Building Inspector. Nevertheless, the petitioner, Mariano Tagalicud, purchased the subject property and existing building improvement

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ten years after construction and final inspection had been granted by the County. They assumed all existing building improvement complied with governmental regulations. However, a required field survey and map dated February 14, 1985, shows the existing dwelling encroached into one of the sideyard setbacks. The setback violation and prior knowledge of the sideyard setback variance cannot be attributed to the petitioner's own negligence, as it was not a self-created problem but one that was passed on and made known to them. Therefore, the denial of the variance from the minimum sideyard setback would impose an undue economic, as well as a design hardship on the petitioner.

2. That there are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the single family dwelling to comply with the minimum setback requirements would be putting excessive demands upon the applicant, when a more reasonable solution is available. 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 possible governmental error made approximately 10 years ago. The action of the petitioner to legitimize the structure is one which is being done of their own accord. In view of the above considerations, any other alternatives in resolving this issue would only be putting excessive demands upon the applicant when a more reasonable solution is available.

3. That 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, by establishing an accurate common sideyard boundary line between the subject non-conforming sized parcel (lot 260) and the vacant non-conforming sized parcel (lot 259), any future siting of a new dwelling or permitted structures on the vacant parcel with a required minimum 8-foot sideyard setback may ultimately result in a minimum distance of 14.64' between the building walls. In addition, since the vacant lot is below the existing road grade and not level with the subject lot, any differences in the finished lot grades could result in finished building elevations which could contrast and provide variation to mitigate the present circumstances. Therefore, while the existing location of the existing dwelling with a 6.64 to 7.49 foot sideyard setback does not meet the minimum sideyard setback requirement stipulated by the Zoning Code, it is felt, in this instance, that adequate air, light and circulatory functions will still be provided for.

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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 or its authorized representative shall comply with all of the stated 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 single family dwelling and attached carport shall be permitted under the non-conforming criteria established in the Zoning Code.
3. All other applicable State and County rules, regulations, and requirements be complied with.

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

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

Sincerely,



ALBERT LONG LYMAN  
Planning Director

WRY:wkm