

CERTIFIED MAIL

May 9, 1985

Mr. Michael M. Crisafi  
P. O. Box 575  
Captain Cook, HI 96704

Dear Mr. Crisafi:

Variance Application (V85-6)  
Les Miller  
Tax Map Key 7-8-14:16

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 interior building improvements within an existing single family dwelling with a 15.0-foot and 9.33-foot open clearspace yard in lieu of the minimum 20-foot rear yard and minimum 14-foot open clearspace yard setback as required in the County's Resort (V) zoned district.

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 9,279 square foot parcel was created prior to 1948. On September 29, 1978, Building Permit No. 03208 was granted for the construction of a new 1,456 square foot 2-bedroom dwelling. On March 9, 1979, Building Permit No. 03473 was issued to enclose an existing 3' X 56' porch area. On March 14, 1984 SMA Permit No. 84-8 was issued to Les Miller to convert a single family dwelling to a three (3)-unit apartment. In view of the previous governmental approval, there is evidence of a possible governmental error on construction plans relating to building setback on the site plan for the construction of the existing two story dwelling in 1978. The approved building plans denoted a minimum 15'-0" front and rear yard setback requirements. As such, the setback violation of the existing dwelling cannot be attributed to the petitioner's own negligence, as it was not a self-created problem, but one that was passed on to them. Therefore, the denial of the variance would impose an undue economic, as well as a design hardship, on the petitioner.

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The minimum building site for a property within the Resort Hotel (V) district is 15,000 square feet. The subject property contains a land area of 9,279 square feet and is deemed as a non-conforming lot since it does not meet with the minimum lot size requirement. Further, the depth of the property varies from 49.61 to 79.17 feet. In applying the required 20'-0" front and rear yard setbacks and 10'-0" sideyard setback, the resultant buildable area varies from 12'-0" to 34'-0" for a net buildable area of 2,970 square feet or 32% of the lot area. This results in a special and unusual circumstance.

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 7 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, 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. Additionally, 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 or adverse impact to the area's character or to adjoining properties.

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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. The plans for the proposed interior renovations shall be submitted to the Planning Department for Plan Approval within one year of the effective date of this variance permit.
3. Construction of the improvements shall commence within one year of the effective date of Final Plan Approval and be completed within two years thereafter.
4. 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 LONO LYMAN  
Planning Director

WRY/MO:wkm

bcc: Plan Approval Section  
SMA Minor No. 84-8