

CERTIFIED MAIL

May 5, 1986

Mr. Stephen D. Quinn
Attorney At Law
425 Dillingham Transportation Bldg.
735 Bishop Street
Honolulu, HI 96813

Dear Mr. Quinn:

Variance Application (V86-11)
Applicant: Michael A. Givens
Tax Map Key 7-3-22:24

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 2+ foot side yard setback in lieu of the minimum 10-foot side yard setback as required in the Unplanned zoned district. The subject property, which consists of 17,377 square feet, is identified by Tax Map Key 7-3-22:44, is located on the north side of Ahikawa Street, approximately 1,000 feet from the Ahikawa Street-Hawaii Belt Road intersection, Kona Coastview Subdivision, Kalaea, North Kona, Hawaii.

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 subject 17,377 square foot parcel was created in May 18, 1964, and is considered as a non-conforming lot. Building Permit No. 44341 was granted for the construction of a new three (3) bedroom dwelling. Plans approved to construct the existing dwelling are no longer available from the files in the Department of Public Works, Building Division.

MAY 6 1986

Mr. Stephen D. Quinn
Page 2
May 5, 1986

Therefore, it cannot be conclusively determined whether the error was done by the applicant, contractor, Planning Director or by the Building Inspector. Final approval was granted for the dwelling on November 11, 1970. It was assumed that all existing building improvement complied with governmental regulations. However, a field survey and map dated May 31, 1985, shows the existing dwelling encroached into one of the side yard setbacks. The setback violation and prior knowledge of the side yard setback variance cannot be attributed to the petitioner's own negligence, since a contractor was hired to construct the dwelling and final approval being granted for the dwelling by the County. Therefore, the denial of the variance from the minimum side yard setback would impose an undue economic, as well as a design hardship on the petitioner.

ALTERNATIVES

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 15 1/2 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.

INTENT AND PURPOSE

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 side yard boundary line between the subject non-conforming sized parcel (lot 21) and the adjoining parcel to the west (lot 21), any future construction or additions will require a minimum 10-foot side yard setback and may ultimately result in a minimum distance of 12+ feet between the building walls. In addition, since Lot 21 is approximately 15 feet below the subject lot, this difference in elevation provides a natural topographical feature to ensure that light, air, physical and visual circulatory functions are available. Therefore, while the existing location of the existing

Mr. Stephen D. Quinn
Page 3
May 5, 1986

dwelling with a 2+ foot side yard setback does not meet the minimum side yard 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.

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 areas character or to adjoining properties.

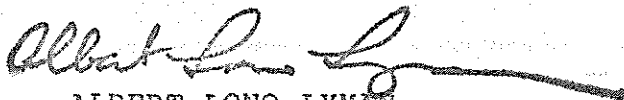
This variance request is approved subject to the following conditions:

1. The petitioner, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
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 shall be complied with.

Should any of the foregoing 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,



ALBERT LONO LYMAN
Planning Director

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