

CERTIFIED MAIL

September 25, 1986

Mr. Sanford K. Okura
101 Aupuni Street, Suite 202
Hilo, Hawaii 96720

Dear Mr. Okura:

Variance Application (V86-32)
Sanford K. Okura
Tax Map Key 1-5-91:30

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 existing single family dwelling with a side yard setback of 5-foot in lieu of the minimum 10-foot side yard setback as required in the Agricultural zoned district, Hawaiian Shores Subdivision, Waiakahiula, Puna, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

That there are special and 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 12,040 square foot parcel was created in May 3, 1961, and is considered as a non-conforming lot. Building Permit Number 811725 and 811826 were approved for the construction of a 3 bedroom dwelling and a carport/storage addition. Plans approved to construct the dwelling and addition are no longer available from the files in the Department of Public Works, Building Division. Therefore, it cannot be conclusively determined whether the error was done by the applicant, contractor, Planning Director or by the Building

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Inspector. Final approval was granted for the dwelling and carport/storage addition on December 22, 1981. The setback violation and prior knowledge of the side yard setback variance cannot be attributed to the petitioner's negligence, since the dwelling was constructed by a previous land owner (Alfred Cito) and passed onto him. 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 reasonable alternatives to resolve the difficulty. The alternative to remove that portion of the dwelling to comply with the minimum setback requirements would be putting excessive demands upon the applicant, when a more reasonable solution is available. This removal alternative would be unreasonable and burdensome to the petitioner, as it was not a self-created problem, but one which was passed onto him by the previous owner. The action of the petitioner to legitimize the structure is one which is being done of his 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 parcel and the adjoining parcel to the north (parcel 21), any future construction will require a minimum 10-foot side yard setback and may ultimately result in a minimum distance of 15 feet between building walls. The existing 5 foot side yard setback meets with the requirements of the County Housing Code. Therefore, while the existing dwelling does not meet the minimum side yard setback requirement as 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.

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The 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 garage/storage shall be permitted under the non-conforming provision of 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

MO:ds

cc: Building Division