

CERTIFIED MAIL

June 16, 1986

Mr. Bryan Hirokane
1242 Honokahua Street
Honolulu, HI 96825

Dear Mr. Hirokane:

Variance Application (V86-8)
Tax Map Key 7-3-39:42

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 2.93 foot side yard setback in lieu of the minimum 10 foot side yard setback and a minimum 5 foot open clearspace as required in the Unplanned zoned district. The subject property which consists of 10,000 square feet is identified by Tax Map Key 7-3-39:42 and is located on the north side of Ka'iminani Drive approximately 50 feet west (makai) of the Waikane Place/ Ka'iminani Drive intersection, Kona Palisades Subdivision Unit II, Kalaoa 5th, 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 10,000 square foot parcel was created in 1970 and is considered as a non-conforming lot. Building Permit No. 791101 was granted for the construction of a new four (4) bedroom dwelling. Plans approved to construct the existing dwelling are no longer available from the files in the Department of Public Works, Building Division. The petitioner indicates that the house was inadvertently constructed in the setback area . . . due to an error by the contractor who thought that an extraneous pipe was a property pin. Final approval was

JUN 17 1986

Mr. Bryan Hirokane
Page 2
June 16, 1986

granted for the dwelling on August 19, 1980, and it was assumed that all existing building improvement complied with governmental regulations. However, a field survey and map 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 12 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 270) and the vacant non-conforming sized parcel (lot 271), any future siting of a new dwelling or permitted structures on the vacant parcel with a required minimum 10-foot side yard setback may ultimately result in a minimum distance of 12.93' between the building walls. In addition, since the vacant lot is 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 2.93 to 9.45 foot side yard setback does not meet the minimum side yard setback requirement stipulated by the

Mr. Bryan Hirokane
Page 3
June 16, 1986

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.

Please note however, that since Mr. Joseph Debus, Sr., in behalf of the Kona Palisades Community Association, filed an objection to the your request, he has ten (10) working days in which to file a request to have the Planning Commission review this request.

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. The petitioner or its authorized representative shall file an application for a variance from the Housing Code requirements.
4. 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:lv

cc: Mr. Joseph O. Debus, Sr.
DPW-Building Division
bcc: Norman