

CERTIFIED MAIL

August 3, 1987

Mr. and Mrs. James Hezekia  
P. O. Box 1270  
Kealahou, HI 96750

7-9-010:057

Dear Mr. and Mrs. Hezekia:

Variance Application (V87-41)  
Variance from minimum rear yard setback requirement  
Tax Map Key 7-9-57

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 construction of an open patio, bathroom and storage addition to an existing single family dwelling with a rear yard setback of 10 feet in lieu of the minimum 20 foot rear yard setback requirement within the Single Family Residential (RS-15) zoned district. The subject property which consists of 15,000 square feet is located on the east side of the Hawaii Belt Highway, approximately 250 feet north of the Hawaii Belt Highway/Hokukano Road intersection, Hokukano 1st, North Kona, Hawaii, TMK: 7-9-10: 57.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property. The subject property was subdivided in 1961 prior to the adoption of present subdivision code. Presently, for a 15,000 square foot lot, the minimum average width requirement is 90 feet. The subject property has a 75 foot average width with a 200 foot depth. The existing dwelling which was constructed in 1986 had to be sited on the rear portion of the property because of the steep slope which occurs on approximately the front half of the subject property. This topographical constraint reduces the normal buildable area of a typical level 15,000 square foot lot. As such, the petitioners have had to recognize this constraint in the

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development of their property. Realizing this topographical difficulty, the only reasonable area for the petitioner to place any further development that can be functionally designed with the existing single family dwelling is to the rear portion of the property. The design of the proposed partially open structure is such that the only location to construct this addition is to the rear of the property. The only area which is being required for the variance is the bathroom and storage area which is being walled in. The topographical changes between the adjoining properties are also a consideration in this particular situation. The petitioner has also had to construct a retaining wall on the rear property line because of this and also has constructed privacy walls on the north and south side property lines.

Therefore, based on the above considerations, we have determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

The petitioner has limited design alternatives for the proposed development of this property. The only area which this open patio would have a reasonable functional relationship with the dwelling is to the rear of it. The location of it anywhere else on the property because of the topographical conditions would make it unreasonable in terms of its function with the single family dwelling use. The location of the open patio towards the front of the property would also be unreasonable in terms of the cost which would be prohibitive for its intended purpose. As such the proposed design scheme would be a reasonable alternative in light of the location of the existing dwelling and the topographical conditions of the property. Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the land characteristics and its present usage. In this particular case, the imposition of the other alternatives is considered to be excessive, when a more reasonable solution is available.

#### INTENT AND PURPOSE

The intent and purpose of the setback requirement is to ensure that light, air, physical and visual circulatory functions are available between structural developments and property lines. It is a regulatory tool which is also used in determining design compatibility and functional solutions. In this particular

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application, the proposed design solution which considers the location of the existing single family dwelling, the retaining and privacy walls to the rear and sides of the proposed patio addition will still provide a reasonable area for these functions, although it would not meet the minimum requirements imposed by the Zoning Code. It should be noted that the Housing Code would also permit this structural addition to the single family dwelling with a 5 foot rear yard setback.

Consequently, we have determined that the granting of the variance shall be consistent with the general purpose of the zoning district, the intent and purposes of the Zoning Code and the General Plan. The analysis of the above issues also has concurred that the granting of the variance will not 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, its successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. A building permit for the addition must be secured within one year of the effective date of the variance and shall be completed within two years thereafter.
3. All other applicable State and County rules and regulations shall be complied with.
4. An extension extension of time for the performance of conditions within the Variance may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the Variance; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the Variance Permit.

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

Sincerely,



ALBERT LONO LYMAN  
Planning Director

MO:aeb

cc: DDW (Kona Office: Attn: C. Hezekia)