

CERTIFIED MAIL

August 11, 1987

Mr. Mark Van Pernis  
Gallup & Van Pernis  
P.O. Box 1837  
Kailua-Kona, HI 96745

Dear Mr. Van Pernis:

Variance Application (V87-13)  
Variance from Minimum Side Yard Setback Requirement  
Tax Map Key 7-8-14:48

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 for a side yard setback of 8'-6" and the 0'-0" side yard setback be denied and replaced by a 5'-0" setback. The subject property is 2,272 square feet in area, identified by Tax Map Key 7-8-14:48 and is located directly east (mauka) of the Painted Church approximately 100 feet east of Alii Drive, Kahaluu, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the petitioner of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The land area of the existing parcel is 2,272 square feet which is insufficient for a conventional dwelling to abide by the County Zoning Code's building setbacks. The lot's dimensions are: N=38'-9", E=53'-2", S=41'-9", and W=59'-2". Because the access is not either a public road nor a road lot, there is consequently no front or rear property line, and thus all four property lines are considered side yards.

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Also, present State Health Department rules require a minimum land area of 5,000 square feet in order to utilize an individual wastewater system. Therefore, a condition is imposed pertaining to this issue. Additionally, the County's Housing Code imposes 10-foot setbacks in this case for which a separate variance (from the Board of Appeals) is required.

#### ALTERNATIVES

The lot is exceedingly small and cannot be increased in size so the limited area is a permanent restriction wherein some leeway is needed to permit the applicant to reasonably use his property.

There are reasonable design alternatives possible for small size lots, for example a smaller building for a small lot, reduced scope carport (from two car size to one), or constructing a third story. Building heights in the resort zone can be 45 feet.

The setback variance for the south portion of the building is deemed a reasonable request, given the scale of the property and its adjacent neighbor to the south.

But because of the even smaller lot (1,300 sq. ft.) adjacent to the north however, and the requested carport's roofline projection having no setback, the north side yard would be rendered negligible and would cause an adverse impact on the adjacent property to the north. The virtual "zero" setback at the north is denied and a 5'-0" north side yard is permitted, with conditions.

#### INTENT AND PURPOSE

The purpose of the setback requirements is to ensure that light, air, visual and physical circulatory functions and activities are available between the proposed structure and its property lines as well as for their effect upon adjacent properties and structures, (as much for the applicant as for the adjacent neighbor). Thus, the imposition of setbacks is a regulation to help achieve compatibility and to help protect against congestion.

The application requested no north side yard setback for the roofline which would extend all the way to the north property line.

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Permitting the "zero" setback from the north property line would effectively obliterate any north side yard, and the solid mass of roof would perch virtually on the boundary. No light, air, circulation or visual open space would appear along that line. The presence of an even smaller lot adjacent to the north compels that a functional setback at this boundary be required.

By requiring a 5'-0" setback for the support posts of the carport from this small lot's north boundary, a reduced but still functional separation will be ensured should the adjoining property be developed, and on a commensurately reduced scale given the two small lots, no substantial adverse impact would be caused by one development's proximity to a future one. The requested 8'-6" setback in lieu of the 10'-0" requirement on the south end of the property would not cause substantial adverse impact given this situation.

Based on the foregoing findings, the variance as approved by the Planning Director would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

The Planning Director has concluded that this request be approved subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction within the permitted 8'-6" (tapering to 8'-8") south side yard setback area shall consist of only the building's south roof overhang as shown on the drawings submitted with the application dated February 26, 1987.
3. From the north boundary, a 5'-0" side yard setback shall be permitted for the carport posts. Roof overhangs into the setback area of 5'-0" shall not exceed those shown for the carport on the drawings submitted with the variance application dated February 26, 1987. No other projections shall be permitted into this side yard. No partial or full enclosures shall be permitted within the carport except for the 4'-0" high partition for the laundry as shown on said drawings, unless the walls or partitions meet the standard 10'-0" side yard setback requirements.

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4. The applicant shall submit to this office, a copy of the sewage disposal facility plans which have been approved by the State Department of Health for this parcel's development when applying for his County building permit.
5. The petitioner or his authorized representative shall file an application for a variance from the Housing Code requirements.
6. A building permit for the dwelling must be secured within one year of the effective date of the variance and shall be completed within two years thereafter.
7. All other applicable State and County rules and regulations shall be complied with.

NOT NEW  
BECAUSE  
RESIDENT ZONE

Should any of the foregoing conditions not be met, the variance permit shall be deemed null and void.

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

Sincerely,



ALBERT LONO LYMAN  
Planning Director

DT:lv

cc: Building Division-DPW