

CERTIFIED MAIL

August 19, 1987

Ms. Goldie Finelt  
77-6703 Nohelani Place  
Kailua-Kona, Hawaii 96740

Dear Ms. Finelt:

Variance Application (V87-33)  
Variance from rear yard setback requirements  
Tax Map Key 7-7-22:15 North Kona, Hawaii

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 dwelling to remain with a rear yard setback of 10.64 ft. in lieu of the required 20 ft. setback. The subject property is 10,000 sq. ft. in area, identified by tax map key 7-7-22:15 and is located on the north end of Nohealani Place, Keauhou Uka Subdivision, Unit 2, Kapalaalaea 2nd, 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.

Building permit 07437 for the structure was applied for on April 14, 1986 by the building contractor, Bob Haskell and approved by the county on April 16, 1986. The County's file copy indicates a site plan on sheet 1. Said plan shows the proposed building sited in compliance with the Zoning Code, namely, 20 ft. to the rear boundary. The dwelling was subsequently constructed. The owner, in 1987, detected the error in the siting when surrounding dwellings were built and found that her dwelling encroached about halfway into

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the setback area. A survey done by Wes Thomas and Associates on May 7, 1987 confirmed the incorrect siting of the building. The dwelling has been completed and occupied for almost one year.

Although there is room for proper setbacks on this parcel, it would require moving the entire house about 10 ft. to the west. Physical renovations such as eliminating 10 ft. of the house would also be possible. In all other respects the dwelling conforms to the zoning code.

Based on the approved building permit and accompanying site plan it is concluded that there was no willful intent to subvert the zoning requirements. The only conclusion that can be drawn is that the party responsible for physically siting the structure in accordance with County approved plans must bear the responsibility for the incorrect placement of the residence.

It is further noted that the most seriously affected adjacent owner is not complaining over the closer proximity of the subject building to his property (see statements under "Public Comments").

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the property.

#### ALTERNATIVES

There are no reasonable alternatives to this situation. It would be unreasonable to require moving a completed occupied dwelling a 10 foot distance. It would also be unreasonable to require chopping off 10 feet from a completed dwelling. Moreover, these alternatives are unreasonable when it has been determined that it was not wilfully caused by the applicant.

#### INTENT AND PURPOSE

The intent and purpose of the setback requirement is to ensure that open space, light, air, and circulatory functions are available between a proposed structure and its property lines as well as for maintaining these effects on adjacent properties and structures. Thus, the imposition of setbacks is a regulation to help in achieving spatial compatibility and to help prevent congestion.

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In this case the standard building setback of 20 ft. was inadvertently reduced to 10.64 ft during the building's construction stage, even though the owner's plans and instructions specified the proper setbacks.

The variance request is therefore to approve the existing situation thus sanctioning the decreased rear setback.

While the subject structure has a 10.64 rear yard, the building is canted 15 degrees west from the rear property line axis thus the rear yard setback increases to 22 ft. at the far end of the building. Spatially, the building to ground ratio is 19%, presenting 81% of open space for this parcel which is considerably more open space than is typical in the area.

Based on the foregoing findings, the variance request 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 variance request is 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. No other projections, additions, or structures shall be permitted within the reduced rear setback area.
3. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the variance 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:kb  
cc: Lawrence Cohn