

# 303

CERTIFIED MAIL

September 9, 1987

Mr. Harold McPherson  
P. O. Box 618  
Naalehu, HI 96722

Dear Mr. McPherson:

Variance Application (V87-32)  
Harold McPherson  
Tax Map Key 9-4-11:57

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 an existing single family dwelling to remain with a rear yard setback of 15 feet in lieu of the minimum 25 foot rear yard setback. The subject property is 20,000 square feet in area, identified by tax map key 9-4-11:57 and is located within Block 17 of the Mark Twain Subdivision, Mahaiula-Nukakaia, Ka'u, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which would 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.

According to the County's Real Property Tax Division, the original owner, Louise Dibble purchased four lots in the Mark Twain Estates subdivision in 1971 and subsequently obtained a building permit to construct a 416 square foot dwelling on parcel 57 (although the building permit #771971, was issued for parcel 58) in August 1977.

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The permit was issued showing the "distance to nearest interior lot boundary" to be 30 feet. The rear yard setback for this 20,000 square foot lot is 25 feet.

The dwelling was constructed by a local carpenter hired by Mrs. Dibble, Clyde Kaneshiro, who has stated that he built the structure where she directed - on a leveled mound. County records show no notification to building inspectors at any of the required phases of construction. Since there was no call for inspection, none was ever made, according to the Building Division of Public Works. Thus, the location of the dwelling was not checked by them. It is, however, the responsibility of the permittee to notify the County Building Division of the start of construction. The owner also apparently decided to build on parcel 57 although the permit was issued for parcel 58. In December 1980, the notation "closed permit" is indicated on the subject building permit indicating that the structure was up but no inspections had been made concerning it because there was no notification by the permittee to the Building Division personnel. The building plans are no longer available from the Building Division, and the original applicant (Mrs. Dibble) does not live in the State of Hawaii. A survey dated July 1, 1987 revealed that the dwelling is 15 feet from the rear boundary of parcel 57 instead of the 25 feet required by the Zoning Code.

The setback violation and prior knowledge of the error cannot be attributed to the petitioner who acquired the property in 1986 but instead must be directed to the original owner-builder, Louise Dibble who did not site the building on parcel 58, did not observe her own declaration of 30 feet to the nearest interior boundary and did not notify building inspectors concerning the start and pertinent phases of construction as is required by the County code.

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 would 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 is no other reasonable alternative resolving this setback violation since siting and construction occurred 10 years ago. To require the building to be moved now would

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place excessive demands on the applicant who did not cause the problem and would be unreasonable in view of the facts. Furthermore, it is the applicant who revealed the siting discrepancies.

Legitimizing the structures location after the fact is the only reasonable recourse in this situation.

#### INTENT AND PURPOSE

The intent and purpose of the setback requirement is to ensure that adequate separation between a building, its property lines and those adjacent property owners is maintained for light, air and circulatory functions geared to spatial relationships common to the scale of a neighborhood or community.

In this case, although the building has been set 15 feet instead of the required 25 feet from the north boundary line, the fact that the surrounding lots are 20,000 square feet in area presents a less congesting or crowded effect than do smaller sized lot developments. Furthermore, inasmuch as the lots, parcels 57 and 58 have been consolidated (July 31, 1987) and the homesite is now 40,000 square feet in area containing the one small dwelling, the overall building to land ratio becomes 1% resulting in 99% open area. Additionally, there are no other homes built on either side of the street. The non-conforming setback's impact on the surrounding area will be negligible as the entire subdivision is still very sparsely settled. Since its inception in 1962, this plat of 109 lots contains four homes, for example, and the entire 700 lot subdivision contains only about 14 dwellings according to the Real Property Tax Division.

In the event that further development does occur on this property however, a condition is imposed to prevent any other incursions into the rear yard of this parcel under this zoning designation.

It is further determined that granting of the variance would not be considered to be materially detrimental to the public welfare, nor cause any substantial adverse impact to the area's character or to adjoining properties.

Based on the foregoing findings, this variance request is found to 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.

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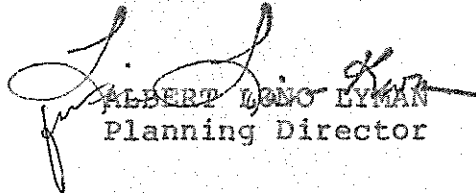
The variance request is approved, subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No other improvements, additions, changes or renovations shall be permitted within the reduced setback area unless the zoning designation should change consequently permitting a lesser setback.
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 LYMAN  
Planning Director

DT:dh

cc: Arthur De Rungs