

CERTIFIED MAIL

November 27, 1987

Mr. Kerry Watson  
RR 1, Box 410  
Captain Cook, HI 96704

Dear Mr. Watson:

Variance Application (V87-48)  
Variance from Side Yard Setback Requirements  
Tax Map Key 8-3-10:15

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 six buildings (5 Farm Dwellings and 1 Covered Parking Shed) with setbacks of 10 feet and less than 20 feet in lieu of the minimum 20 foot side yard setback requirement within the Agricultural (A-1a) zoned district. The subject property is 9.9 acres in area, identified by tax map key 8-3-10:15 and is located on the makai (west) side of Mamalahoa Highway and north side of Honaunau Elementary School, Keeli, 2nd, South 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 the property.

The applicant relied on his deed description's metes and bounds in drawing up his site plan showing 5 farm dwellings and a loading/parking shed. Their siting complied with the County zoning requirements. However, after constructing the 400+ ft. concrete access road, house pads and cesspools for each dwelling based on the original site plan, the adjacent property owner to

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the north contested the straight line boundary (running east-west) and contended that it was, instead, the meandering stone wall. If the boundary is indeed the stone wall, then some of the proposed buildings would become ten instead of the originally platted twenty feet from the "new" boundary. Should the case, now before the court, be settled in the applicant's favor, no variances from the setback requirements would be necessary.

In order to proceed with the development while the boundary dispute is being settled in court, the applicant has requested a variance from the zoning code's 20 ft. side yard setback in order to accommodate the worst case scenario, a 10 ft. shift to the south, of the property's north boundary. Boundary disputes of this nature can take years to settle. Such a delay would mean the entire development plan, and the already developed infrastructure would remain idle.

#### ALTERNATIVES

There are only limited alternatives. The applicant could wait for the court decision. But this could well take years to settle. The applicant could re-site the proposed buildings. But this would entail new cesspools and require the existing access road and the individual driveways (slope and turning radii for the driveways are predicated on the already built concrete roadway) to undergo realignment and reconstruction, an extremely disrupting and costly consideration, which again might well be rendered totally unnecessary, should the straight line boundary based on the applicant's deed, be considered the true property line.

#### INTENT AND PURPOSE

The intent and purpose of the side yard setback is to afford adequate light, space, air circulation, visual and spatial relationships between structures and their boundaries, as well as those of adjacent properties within this community's agricultural zone and local setting. In this case, the adjacent land uses are - coffee fields and vacant lands. Furthermore, the sharp incline of the land, a 22% slope overall plus the developing of the building pads which are 10 to 12 feet below each other along the down slope, give another dimension of space - vertical - to help compensate for the lessened side yards. Each dwelling would therefore be 10 or 12 ft. lower than the other; the loading shed itself would be 27 ft. below the lowest sited dwelling, as well as 60 ft. away on a horizontal plane and each dwelling site is, in addition, 5 to 6 ft. below the north boundary grade. The owner to the north who is disputing the boundary, has no objections to the requested variance.

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Based on the foregoing findings, this 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 areas character and adjoining properties.

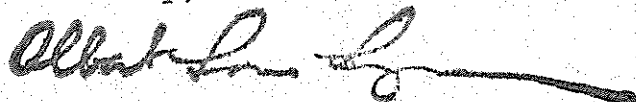
Therefore, the Planning Director has concluded that this request be approved subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No other structures or additions shall be permitted within this reduced side yard setback area unless the standard zoning requirements are met.
3. The five dwellings shall be of single story construction and the loading/parking structure shall not exceed 18 ft. in overall height and sited as shown on plans received dated October 16, 1987.
4. Building permits for the dwellings and the loading/parking structure must be secured within one year of the effective date of this variance and shall be completed within two years thereafter.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, this 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