

CERTIFIED MAIL

November 15, 1988

Mr. David A. Hunt  
P.O. Box 5543  
Kailua-Kona, HI 96745

Dear Mr. Hunt:

Variance Application (V88-18)  
Variance from Minimum Side Yard Setback Requirement  
Tax Map Key 7-3-11:38

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 side yard setback of 6.76 feet in lieu of the minimum 8 foot requirement as required in the Unplanned district. The subject property which consists of 8,981 square feet and identified by TMK: 7-3-11:38, is located on the east side of Mahilani Drive approximately 550 feet west (makai) of the Mahilani Drive/Mamalahoa Highway intersection, Kona Highlands, Section A, Kalaea 1st & 2nd, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

That there are special and unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property. The subject 8,981 square foot parcel was created on September 16, 1968, and is considered as a non-conforming lot. In reviewing the Building Division's records, we have found no records of a building permit being issued to allow the construction of a single family dwelling on the property which appears to have been constructed by the former owners (Shaw) of the property.

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The Real Property Tax Division began assessing taxes on the dwelling in 1975, after a re-survey of the property was done. They also reflect no record of any building permit for the structure. We have found no records of any governmental agency informing any of the former owners of the property of any violation of the permitting requirements (building, electrical, plumbing permits, etc.). Therefore, it cannot be conclusively determined whose fault it is to have this violation not know until now. The setback violation and building permit violation cannot be attributed to the applicant's negligence, since he is the prospective third owner of the property since the dwelling was built. Therefore, the denial of the variance from the minimum side yard setback would impose an undue economic, as well as a design hardship on the applicant.

#### ALTERNATIVES

That there are no reasonable alternatives to resolve the difficulty. The alternative to remove that portion of the dwelling to comply with the minimum setback requirements would be putting excessive demands upon the applicant, when a more reasonable solution is available. This removal alternative would be unreasonable and burdensome to the applicant since it would affect the structural integrity of the dwelling. Further, it is not a self-created problem, but one which was passed onto him by the previous owners. The action of the applicant to legitimize the structure is one which is being done of his own accord. In view of the above considerations, any other alternatives in resolving this issue, would only be putting excessive demands upon the applicant when a more reasonable solution is available.

#### INTENT AND PURPOSE

That the granting of the variance is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the General Plan. The intent and purpose of the setback requirements are to ensure that light, air, physical and visual circulatory functions are available between structures and property lines. In this particular application, by establishing an accurate common side yard boundary line between the subject parcel and the adjoining parcel to the south (parcel 39), any future construction will require a minimum 8-foot side yard setback and may ultimately result in a minimum distance of approximately 15 feet between building walls. The existing 6.75 foot side yard setback meets with the requirements of the County Housing Code. Therefore, while the existing dwelling does not meet the minimum side yard setback requirement as stipulated by the Zoning Code, it is felt in this instance, that adequate air, light, and circulatory functions will still be provided for.

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In view of the above issues, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the areas character or to adjoining properties.


This variance request is approved subject to the following conditions:

1. The applicant, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
2. Within 30 days of the approval of this variance the applicant, shall apply for a building permit for the existing dwelling and shall comply with all applicable requirements of the Housing, Plumbing and Electrical Codes within 120 days of applying for the building permit application.
3. All future additions, renovations and improvements on the subject property shall be in conformance with the requirements of the Zoning Code.
4. All other applicable State and County rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may nullify this variance request.

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

Sincerely,

  
ALBERT LONO LYMAN  
Planning Director

MO:lv

cc: Building Division-DPW