

CERTIFIED MAIL

April 28, 1989

Mr. Nicholas Kerna
75-5706 Hanama Place
Kailua-Kona, HI 96740

Dear Mr. Kerna:

Variance Application (V88-39)
Tax Map Key 7-5-35:5

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 enclosed portion of a dwelling to remain cantilevered 2 ft. into a required 7 1/2 ft. setback which was granted by a Planned Unit Development (PUD) Permit No. 25. The property is located 400 ft. west (makai) from Alii Drive in the Alii Point Subdivision, Puapuaa 2nd, North Kona, Hawaii, TMK: 7-5-35:5.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances applying to the subject property itself which deprive the applicant of substantial property rights that would otherwise be available or which interfere with the best use or manner of development of the property; rather, there are special circumstances related to the process whereby the development of the property was allowed to commence.

The owner complied with the approved construction drawings in every respect. However, it was governmental error in misreading the plans which inadvertently permitted the subject projection into the sideyard setback.

The building permit was issued on June 6, 1988, and the construction infraction was noticed in late December.

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Governmental error itself is not a sole nor compelling basis to determine that there are special and unusual circumstances applying to the subject property. The degree of the error, in this case, would not 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 if the violative projection were to be removed. Reliance upon governmental approvals, however, is deemed to be an overriding consideration in this instance given the extent of impacts to surrounding projects and the alternatives available.

ALTERNATIVES

The only alternative available is tearing down the projection and/or requiring it to be converted into an open balcony. Dismantling the wall would damage the integrity of the building and would involve significant re-construction costs.

The code offending projection is partly blocked from the adjacent (east) property's view by a rock wall, thus, little, if any, visual or spatial open space between the two properties is affected. From the north, south, and west directions, the intrusion cannot be seen nor sensed.

INTENT AND PURPOSE

The intent and purpose of the setback requirement is to allow air and light circulation and afford a degree of visual and spatial openness in accordance with a community's standards and expectations between a building, its property lines, and adjacent neighboring properties as well.

In this case, it has been determined that the openness and spaciousness of the properties involved have not been materially compromised, and coupled with the fact that it was due primarily to governmental error.

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.

Therefore, the Planning Director has concluded that this request be approved subject to the condition that no further building additions or modifications to the encroaching projection shall be permitted.

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

Sincerely,



DUANE KANUHA
Planning Director

DT:lv

cc: Mr. Pat Hughes
Kona Planning Dept.
PA File