

CERTIFIED MAIL

August 6, 1991

Mr. Donald Hardister
P. O. Box 442
Volcano, HI 96785

Dear Mr. Hardister:

Variance Application (V90-29)
Minimum Side Yard Setback Requirement
Tax Map Key 1-1-09:25

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the partial approval of your variance request to allow an existing enclosed utility room and water tank with a side yard setback of 11'-0" to remain in lieu of the minimum 15'-0" side yard setback requirement as required within the Single Family Residential (RS-20) zoned district identified by Tax Map Key 1-1-9:25 at the Mauna Loa Estates Subdivision, Keaau, Puna, be granted; however, that the existing walled carport be denied. The Planning Director's conclusion is based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum setback requirements for the enclosed utility room and water tank. The special and unusual aspect of this case is that the setback problem with regard to the enclosed utility room and water tank did not surface until recently. A building permit for the dwelling and water tank was issued to a previous owner by the Department of Public Works and subsequently final inspection approval was granted in October 1986. The petitioner purchased the existing dwelling in 1989 with the enclosed utility room and water tank already in place.

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.

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However, there is no special or unusual circumstances with regards to the walled carport as this walled section was constructed in early 1990 without approval of a building permit. This situation added to the encroachment within the 15 foot setback area, resulting a distance of 11 feet to the side boundary. Based on the foregoing, this portion of the variance request should be denied.

ALTERNATIVES

There are no reasonable alternatives in resolving the existing enclosed utility room and water tank encroachments. Removing or remodeling the existing structures is not economically feasible and would disrupt the design and function of those structures. The enclosed utility room and water tank setback encroachment occurred prior to the petitioner's acquisition of the subject property. The action taken by the petitioner to legitimize these existing improvements is one which is being done on his own accord.

The improvement of walling up the open carport was done without proper permit approvals, resulting in further non-compliance with the Zoning Code minimum setback requirements. Removal of the plywood and sidings to revert to the original open carport would not be considered to be unreasonable nor a hardship on the petitioner. In addition, the removal of the subject walled portion would bring the open carport into a lesser impact to the adjoining property.

INTENT AND PURPOSE

The intent and purpose of the minimum building setback requirements are to assure that adequate open space, air, light, visual and related spacial considerations are available between structures and property lines. In this particular situation, the width and location of the existing utility room and water tank will still provide for these functions, although it would not meet the minimum 15 feet side yard setback requirement.

In view of the foregoing, it is determined that the granting of the variance request with respect to the existing utility room and water tank would not be considered to be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character or to adjoining properties.

However, the proximity of the existing walled carport will cause substantial adverse impact to the adjoining property. As mentioned above, there is the reasonable alternative of removing the walled portion which was constructed without proper permit approvals in

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order to resolve this encroachment situation. As such, it is further determined that the variance request to allow this portion of this structure to be setback 11 feet from the side property line be denied.

Based on these findings, the Planning Director has concluded that the request to retain the existing utility room and water tank at a minimum 11 feet from the side yard property line be approved subject to the following conditions:

1. The applicant, his assigns or successors shall be responsible for complying with all stated conditions of approval.
2. That all future structural additions to the dwelling shall be in compliance with all Zoning Code requirements and no other setback variances shall be considered for any development of this property.

Should any of the foregoing conditions not be complied with, the Planning Director may initiate proceedings to revoke this Variance Permit.

In accordance with the denial decision, within 120 days of receipt of this decision the petitioner shall remove the improvements made to the carport which were done without proper permit approvals. A building permit shall be obtained beforehand.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority

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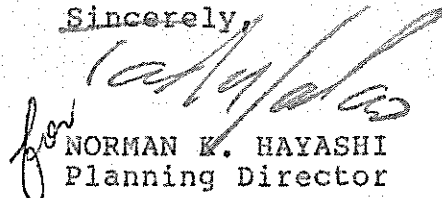
vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

If you have any questions on this matter, please feel free to contact Alice Kawaha at our office.

Sincerely,


for NORMAN K. HAYASHI
Planning Director

AK:smo
2348D

cc: Building Division, DPW

bcc: TMK File