

CERTIFIED MAIL

June 13, 1990

Mr. Curtis O. Keil
15 Ikawa Place
Hilo, HI 96720

Dear Mr. Keil:

Variance Application (V89-33)
Variance from Side Yard Setback
Tax Map Key 1-5-111:68

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request to allow an existing single family dwelling to remain with a side yard setback of 6'-0" in lieu of the minimum 8-foot requirement as required in the Agricultural (A-1a) zoned district on the mauka side of Popaa Street approximately 1,500 feet southeast of the Kahakai Boulevard/Popaa Street intersection, Hawaiian Shores Subdivision, Waiakahiula, Puna, Hawaii. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be the special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available, or which interferes with the best use or manner of development of the property.

Prior to the structure being built there was sufficient space to locate the building as planned. However, any shifting of the building south from the approved building permit site plan location would jeopardize the situation because that side setback distance was exactly 8 ft., with no room for adjustment. The driveway on the north could well have been placed closer to the northside boundary, allowing more leeway on the south side as there are 8 ft. of distance between the edge of the driveway and the north boundary. The lot is 70 ft. wide and, as shown on the construction drawings the house is 52 ft. wide, leaving a

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total of 18 ft. available for the 16 ft. of sideyard (8 ft. on each side) necessary to abide by the Zoning Code. With the building planned to almost the maximum width of the lot, it should have been very apparent that any shifting of the building would result in some projection into the required setback distance. Therefore, no special circumstances are attributed to the property itself and the variance request was necessitated by the owner's field adjustment without due consideration for the required setback provisions.

There is an unusual aspect to the situation however, which is the ownership of the land. This aspect lends itself to the solution and it is the basis for two of the three alternatives that are available.

ALTERNATIVES

Alternatives are available to rectify this situation. One is to remove the encroaching portion of the building which is the illegally enclosed deck/patio. This enclosure, which was built without a building permit, if removed, could conform with the zoning code as an allowable open projection (Section 25-65 of the Zoning Code). However, the Kitchen portion would still encroach.

The second alternative is for the subject property to obtain a setback easement from the adjacent parcel to the east (Parcel 69).

The third is to shift the pertinent property line by consolidation/resubdivision action to achieve an equitable land "exchange" sufficient to accommodate the required setback distance for the affected land near the building.

Alternatives #2 and #3 are considered reasonable and readily available since both affected parcels, 68 and 69, are now owned by the same person, Norman Poole, and he is willing to permit the resubdivision to accommodate this decision.

INTENT AND PURPOSE

The intent and purpose of the setback requirement is to provide for a certain amount of light, air, circulation, open space and related spatial considerations to be available between properties and buildings, in an appropriate scale.

While the magnitude of the encroachment is relatively slight, it is existing and requires resolving for future owners. Because the remedies that are available in this situation are reasonable and readily attainable it is therefore determined that the variance request be denied.

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It is therefore stipulated that corrective action commence and the applicant is hereby granted 6 months from the receipt of this letter to comply with the zoning code setback distance requirements. The remedy suggested is the obtaining of an easement or the revising (by resubdivision) of the side lot lines (the mutual boundary) between parcels 68 and 69 to obtain the requisite setback distance for the affected portions of the subject dwelling. In the case of an easement being obtained, such easement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii, by the Department, but at the cost and expense of the applicant, and its tenure shall be coterminous with the present siting of the subject dwelling.

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 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.

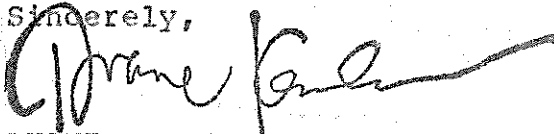
All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with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

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Should you have any questions, please feel free to contact us.

Sincerely,



DUANE KANUHA
Planning Director

DT/DK:mra/lm

Enc. - Background Report

cc/enc: Planning Commission